

STANDING COMMITTEE ON RURAL DEVELOPMENT

(2011-2012)

31

FIFTEENTH LOK SABHA

**MINISTRY OF RURAL DEVELOPMENT
(DEPARTMENT OF LAND RESOURCES)**

**'THE LAND ACQUISITION, REHABILITATION AND RESETTLEMENT
BILL, 2011'**

THIRTY-FIRST REPORT



LOK SABHA SECRETARIAT

NEW DELHI

May, 2012/Vaisakha, 1934 (Saka)

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Presented to Lok Sabha on 17.05.2012

Laid in Rajya Sabha on 17.05.2012



LOK SABHA SECRETARIAT

NEW DELHI

May, 2012/Vaisakha, 1934 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON RURAL DEVELOPMENT (2011-2012)

Shrimati Sumitra Mahajan - *Chairperson*

**MEMBERS
LOK SABHA**

2. Shri Gajanan D. Babar
3. Shri Sandeep Dikshit
4. Shri Manikrao Hodlya Gavit
5. Shri Maheshwar Hazari
6. Shri Ramesh Vishwanath Katti
7. Shri P. Kumar
8. Shri Raghuvir Singh Meena
9. Dr. Ratna De (Nag)
10. Shri Rakesh Pandey
11. Shri A. Sai Prathap
12. Shri P.L. Punia
13. Shri A. Venkatarami Reddy
14. Shri Arjun Charan Sethi
15. Shri Bishnu Pada Ray *
16. Dr. Sanjay Singh
17. Smt. Supriya Sule
18. Shri Kodikunnil Suresh
19. Shri Narendra Singh Tomar
20. Shri A.K.S. Vijayan
21. Smt. Vijaya Shanthi M **

RAJYA SABHA

22. Shri Mani Shankar Aiyar
23. Shri Munquad Ali #
24. Shri Hussain Dalwai
25. Sardar Sukhdev Singh Dhindsa
26. Dr. Ram Prakash
27. Shri P. Rajeeve ^
28. Shri Mohan Singh
29. Smt. Maya Singh
30. Shri Dharmendra Pradhan @
31. Shri D. Bandyopadhyay \$

SECRETARIAT

1. Shri Brahm Dutt - Joint Secretary
2. Smt. Veena Sharma - Director
3. Shri A.K. Shah - Additional Director
4. Shri Ravi Kant Prasad Sinha - Committee Assistant

* Nominated to the Committee w.e.f. 03.01.2012 *vice* Shri Navjot Singh Sidhu.

** Nominated to the Committee w.e.f. 25.11.2011.

Nominated to the Committee w.e.f. 04.05.2012 *vice* Shri Ganga Charan retired on 02.04.2012.

^ Nominated to the Committee w.e.f. 02.11.2011 *vice* Shri P.R. Rajan resigned on 27.10.2011.

@ Nominated to the Committee w.e.f. 04.05.2012 *vice* Ms. Anusuiya Ukey retired on 02.04.2012.

\$ Nominated to the Committee w.e.f. 18.04.2012 *vice* Dr. (Smt.) Kapila Vatsyayan retired on 15.02.2012.

(v)
INTRODUCTION

I, the Chairperson of Standing Committee on Rural Development (2011-12) having been authorized by the Committee to present the Report on their behalf present this Thirty First Report (15th Lok Sabha) on 'the Land Acquisition, Rehabilitation and Resettlement Bill, 2011' relating to the Ministry of Rural Development (Department of Land Resources).

2. The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 as introduced in Lok Sabha on 7th September, 2011 was referred by the Hon'ble Speaker, Lok Sabha under Rule 331 (E) (i) (b) of the Rules of Procedure and Conduct of Business in Lok Sabha on 13th September, 2011 to the Standing Committee for examination and report.

3. Considering the wide ramifications of the Bill, the Committee at their sitting held on 29th September, 2011, *inter alia*, decided to obtain suggestions from the general public, views of the State Governments/UTs, Central Ministries concerned and also to take evidence of the representatives of farmers' bodies, experts, selected State Governments and Central Ministries and the nodal Ministry i.e. the Ministry of Rural Development (Department of Land Resources) on the various provisions of the Bill.

4. In pursuance of the Committee's decision, besides seeking comments of State Governments and selected Central Ministries, a Press release was issued through print and electronic media on 8 October, 2011 for soliciting the comments from general public, stakeholders and others by 31st October, 2011. Apart from individuals, organizations', memoranda, the Committee received comments/suggestions from different State Governments/Union Territory Administrations, Central Ministries, Organisations, Farmers' Associations and the Industry. Based on the response from various stakeholders, the Committee took evidence of the selected associations/bodies of the farmers, the Industry, State Governments, Central Ministries including the Nodal Department i.e. the Department of Land resources (Ministry of Rural Development) and the Ministry of Law and Justice (Legislative Department and Legal Affairs) as indicated in Appendix-II.

5. The Committee at their sittings held on 7th, 9th, 10th and 15th May, 2012 considered and adopted the Draft Report. The Committee were immensely benefitted by the suggestions/contribution made by the Members of the Committee for which I express my sincere thanks to them.

(vi)

6. The Committee wish to express their thanks to the representatives of the Ministry of Rural Development (Department of Land Resources) and the Legislative Department, Department of Legal Affairs (Ministry of Law & Justice) who tendered their evidence before the Committee and attended all the sittings of the Committee when the representatives of Central Ministries/State Governments appeared before the Committee and gave their considered views. The Committee also wish to express their thanks to the representatives of various Central Ministries/State Governments and other organizations/individuals who furnished written information/views as well as those who appeared before the Committee and made available necessary information for consideration of the Committee, which was of great help to the Committee in arriving at conclusions.

7. The Committee would also like to place on record their deep sense of appreciation of the invaluable assistance rendered to them by the officials of Lok Sabha Secretariat attached to the Committee.

8. For the facility of reference and convenience, the observations/recommendations of the Committee have been printed in bold in the body of the Report.

NEW DELHI;
16 May, 2012
26 Vaisakha, 1934 (Saka)
Development

SUMITRA MAHAJAN
Chairperson,
Standing Committee on Rural

REPORT

I. INTRODUCTION

The Land Acquisition Rehabilitation and Resettlement Bill, 2011 (**Appendix I**) was introduced in Lok Sabha on 7th September, 2011 and was referred to the Standing Committee on Rural Development on 13th September, 2011 by the Hon'ble Speaker Lok Sabha for examination and report to Parliament in terms of Rule 331 E (1) (b) of the Rules of Procedure and Conduct of Business in Lok Sabha.

1.2 Land is a precious natural resource and is main source of livelihood of the millions in the Country. 58 percent of the labour in the Country are still engaged in agriculture and allied occupation. Besides, as per 'Economic Survey of India 2011' over 1.8 crore rural families in India are landless. Till 44th Constitution Amendment (notified w.e.f. 20.06.1979) holding property was one of the Fundamental Rights under Part-III of the Constitution of India. However, with the enactment of 44th Constitution (Amendment) Act, 'Right to Property' has been made a legal right vide Article 300 A of the Constitution of India which provides as under: -

***“Persons not to be deprived of Property save by authorities of law -
No person shall be deprived of his property save by authority of law.”***

1.3 Presently, the Central Government and State Governments acquire land across the country for setting up infrastructure projects like airports, roads, for setting up universities/scientific institutions, projects of basic amenities, water/ sanitation works/hospitals, industry and urban development. The land acquisition process is carried out under the provisions of the Land Acquisition Act, 1894 which came into force w.e.f. 2 February, 1899. This Act has been amended from time to time (in pre-independence and post-independence). So far, the Act has been amended 17 times. Since 1960's large scale acquisition is also being done for companies and private sector. Various sections of the Act have also been amended from time to time by the State Governments to meet their specific requirements.

1.4 Elaborating the background of the LARR Bill, 2011, the Ministry of Rural Development (Department of Land Resources) (DO LR) in a written note stated that this Department formulated a revised National Rehabilitation & Resettlement Policy (NRRP), 2007, which was approved by the Cabinet on 11th October, 2007 and the same was published in the Gazette of India dated 31st October, 2007.

1.5 To give a statutory backing to NRRP, 2007, and to align the provisions of the Land Acquisition Act, 1894 with the provisions of the National Rehabilitation and Resettlement Policy, 2007, the Rehabilitation and Resettlement Bill, 2007 and the Land Acquisition (Amendment) Bill, 2007, were introduced in the Lok Sabha during Winter Session of 2007. These Bills were referred for examination to the Parliamentary Standing Committee on Rural Development. The Bills were examined and reports on them were submitted by the Standing Committee. The official amendments to these Bills were developed by the DoLR in consultation with the Ministry of Law. The Bills were considered and passed by the Lok Sabha in its sitting held on 25th February, 2009 and referred to the Rajya Sabha for consideration. However, the Bills lapsed on dissolution of the 14th Lok Sabha.

1.6 The Rehabilitation and Resettlement Bill, 2009 and the Land Acquisition (Amendment) Bill, 2009 were drafted by the Department in consultation with the Ministry of Law & Justice. These were considered by the Cabinet in its meeting held on 23rd July, 2009 and approved for their introduction in the Lok Sabha. The Government, however, did not pursue their introduction.

1.7 The DOLR further stated that the issues related to land acquisition and adequate rehabilitation & resettlement have come into focus again. So, the provisions related to them were given a fresh look and it was decided that a single comprehensive Bill addressing these issues must be brought. Accordingly, a single integrated Bill viz.the Land Acquisition and Rehabilitation & Resettlement (LARR) Bill, 2011 to address various issues related to land acquisition and rehabilitation & resettlement was prepared. It was put in public domain by DOLR on 29th July, 2011 for wide public consultations. Stakeholders were requested to send their comments/suggestions up to 31st August, 2011.

1.8 The Cabinet Note on the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 was considered and approved by the Cabinet on 5th September, 2011. The Bill was introduced in the Lok Sabha on 7th September, 2011.

1.9 Highlighting the need for an unified legislation dealing with land acquisition and rehabilitation & resettlement issues together, the Statement of 'Objects and Reasons' of the Bill' *inter-alia* provides as under:

“The Land Acquisition Act, 1984 is a general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.”

1.10 Salient features of the LARR Bill, 2011 are as under: -

- (1) New integrated legislation dealing with land acquisition and rehabilitation & resettlement while repealing the Land Acquisition Act, 1894.
- (2) Exemption to 16 Central Acts specified in Fourth Schedule from the ambit of the Bill.
- (3) Defining the term “affected family”, which includes both the land losers and livelihood losers.
- (4) Provision of R & R benefits in case of specified private purchase of land equal to or more than 100 acres in rural areas and equal to or more than 50 acre in urban areas
- (5) Provides Social Impact Assessment (SIA) study in all cases where the Government intends to acquire land for a public purpose.

- (6) Provides for formation of a Committee under the Chief Secretary for examining proposals of land acquisition where land sought to be acquired is equal to or more than 100 acres.
- (7) Putting limitations on acquisition of multi-crop land for safeguarding the food security.
- (8) Institutional mechanism for R&R in the form of institutions of Administrator for Rehabilitation and Resettlement, Commissioner for Rehabilitation and Resettlement, Rehabilitation and Resettlement Committee at project level, the Land Acquisition, Rehabilitation & Resettlement Authority at State level and National Monitoring Committee at Central level.
- (9) Provisions of consent of the 80 per-cent affected families for land acquisition for certain projects.
- (10) Provision for enhanced compensation to the land owners and rehabilitation and resettlement entitlements.
- (11) Provision of 25 per-cent on shares as part of compensation in cases where the Requiring Body offers its shares to the owners of land whose land has been acquired.
- (12) Restricting the 'urgency clause' for land acquisition for Defence of India or National Security or for any other emergency out of natural calamities.
- (13) Specified timelines for payment of compensation and provision of rehabilitation and resettlement entitlements.

II. CONSULTATION PROCESS BEFORE INTRODUCTION OF THE BILL

The draft LARR Bill, 2011 was placed in public domain on the website of Ministry of Rural Development (Department of Land Resources) on 29th July, 2011 as a part of pre-legislative consultative process. The comments of the stakeholders on the Bill were invited by 31st August 2011. The Bill subsequently was approved by the Cabinet on 5 September, 2011 and introduced in Lok Sabha on 7th September, 2011. In this regard the representatives of the DoLR in their submission before the Committee on 13th October, 2011 stated that the responses from various State Governments and others were still being received.

2.2 On being enquired by the Committee about the reasons for introduction of Bill in Lok Sabha without even waiting for comments of the State Governments, concerned Ministries, general public and stakeholders, the DO LR in a written note informed:

“The draft LARR Bill 2011 was placed in the public domain on the website of Department of Land Resources on 29th July, 2011 as a part of pre-legislative consultative process. A copy of the draft Bill was also sent to the Ministries/ Department and States/UTs for comments/ suggestions on the Bill. The comments on the Bill were invited up-to 31st August 2011. As per the instructions of the Cabinet Secretariat for inter-ministerial consultations, comments of 13 Ministries/Departments have been incorporated in the Cabinet Note placed before the Cabinet for consideration.”

2.3 Elaborating it further, the Secretary, DoLR stated during evidence:

“The LARR Bill was posted on the net on the 29 July 2011, and we have requested for comments. We have received comments from 13 Ministries. There was no reason why other people or other State Governments could not have replied to us. A deadline had been given and reminders were issued to it. Still, they did not reply.

I would just like to briefly mention about what was happening as far as the Bill is concerned. It was way back in 1997 when it was thought that the Bill requires some amendments. From 1997, the first land acquisition Bill was prepared in 2004 for land acquisition. The second Bill was prepared in 2007, which was passed by the Lok Sabha in 2009 and at that time also the Standing Committee had very extensive consultations with the State Governments and other stake holders and given us suggestions.”

2.4 In this connection the representatives of the Ministry of Law during the evidence before the Committee submitted that the working of the legislation depends on many aspects and views of the State Governments must be taken into consideration. They also informed that it has been settled by the Supreme Court that the consultation means effective consultation. With regard to effective consultation, representatives of the Ministry of Law and Justice, Department of Legal Affairs, submitted:

“we have to invite the comments from State Government, then, to examine them, and then to give appropriate reasons as to whether they are acceptable or not. Both ways, you have to give appropriate reasons in regard to consultations with States.”

2.5 In reply to a specific query by the Committee, the DoLR further stated that they had also not held any dialogue with the affected families.

2.6 Considering the fact that no prior effective consultation was held by the Ministry with the stakeholders, the Committee invited suggestions from the State Governments, Central Ministries and general public and others by issuing press releases in print and electronic media.

2.7 Suggestions, so received, were sent to the Department of Land Resources for examination and furnishing their comments. In response to these suggestions, the Department have responded stating that the suggestions are not acceptable or have explained that the suggested points are already in the Bill. However, in response to 55 suggestions, the Department has responded that **‘the Committee may consider’**.

RECOMMENDATION OF THE COMMITTEE

2.8 **The Committee note that the Land Acquisition (Amendment) Bill, 2007 and the Rehabilitation & Resettlement Bill, 2007 were examined and reported by the Standing Committee on Rural Development (2008-2009). The Bills were passed by the Lok Sabha on 25th February, 2009. However, before these could be passed by Rajya Sabha, the Fourteenth Lok Sabha was dissolved and the Bills lapsed. After constitution of Fifteenth Lok Sabha, there was another attempt by the**

Ministry to bring these two Amendment Bills before the Parliament in August, 2009. The Bills were sent to the Lok Sabha Secretariat on 5th August, 2009 by Ministry of Law and Justice but were not followed-up by the Government. Even though the Government had more than two years time for wider consultations with all stakeholders i.e. between the constitution of Fifteenth Lok Sabha 01.06.2009 and introduction of the LARR Bill, 2011 in September, 2011, it was only on 29 July, 2011, that the Draft Bill was put on DOLR 'website' for consultations and the comments thereon were sought by 31 August 2011. Since the Cabinet approved the Draft Bill on 5 September, 2011 and the Bill was introduced in Lok Sabha on 7 September 2011, the Committee find that there was hardly any time at the disposal of the Government to seriously consider the suggestions received from the stakeholders. The Officers of DOLR were candid in their admission before the Committee that suggestions from the stakeholders were still being received. The Committee deplore the casual approach of the Government in the matter. Even though the Government took over two years in bringing the Bill again they hardly gave any time to the stakeholders, including Central Ministries and State Governments concerned to submit their views and also to consider the same. The Committee's examination has also revealed that not only the State Governments, some of the Central Ministries concerned like Ministries of Urban Development, Panchayati Raj, Tribal Affairs etc. are at variance with the DoLR in respect of contents of the Bill. It is against this backdrop that the Committee invited suggestions from the general public, industry, farmers, NGO's, experts, Central Ministries, State Governments etc. Since all these suggestions are with the DOLR, the Committee would like that these to be seriously examined and considered in consultation with the Ministry of Law to ensure that all the finer points are considered and incorporated in the proposed new legislation which is aimed to replace the over a century old/pre-independence Act. The Committee also recommend that before bringing in any Bill in future, the Government should ensure wider, effective and timely consultations with all relevant and stakeholders so that all related issues are addressed adequately.

III. KEY ISSUES RELATING TO THE LARR, BILL

Apart from written memoranda received from all segments of the society, the Committee heard the views of representatives of Central Ministries, State Governments, farmers organizations, social organizations, legal experts and the representatives of the industry. Out of these discussions, the following key issues, having bearing on the provisions of the Bill, have emerged out:-

- A. Doctrine of Eminent Domain and Acquisition as 'Public Purpose' for private corporations, Public Private Partnerships.
- B. Powers of the Central Government vis-à-vis State Governments in legislation for sale/purchase of land and R & R provisions
- C. Role of Institutions of self government-established by Parts IX & IX A of the Constitution in land acquisition and R&R
- D. Applicability of LARR Bill, 2011 in Scheduled Areas (Schedules V and VI of the Constitution)
- E. Special provisions to safeguard Food Security (Clause 10)
- F. Exemption of 16 Central Acts from purview of the Bill (Clause 98 & Fourth Schedule)
- G. Miscellaneous
 - (i) Applicability of LARR Bill vis-à-vis existing Acts relating to Land Acquisition.
 - (ii) Issues relating to Mines

These are discussed in succeeding paragraphs.

A. Doctrine of Eminent Domain and Acquisition as “Public Purpose” for Private Corporations, Public-Private Partnerships

3.2 The Power of the sovereign to take private property for public use, also known as Eminent Domain or ‘Compulsory Purchase’, and the consequent rights to the owner for compensation, are well established. The origins of the term “Eminent Domain” can be traced to the legal treatise written by the Dutch jurist, Hugo Grotius in 1625, using the term ‘*dominium eminens*’ (Latin for ‘supreme lordship’) and described as follows:

“the property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property.”

3.3 In Indian jurisprudence, since the early 19th century, the doctrine of Eminent Domain has been in the form of land acquisition by the State (as distinct from *purchase* of land by non-state entities), starting from initial provincial legislation during the British Raj through to the consolidation of such provincial legislation in the Land Acquisition Act of 1894. The exercise of the doctrine of Eminent Domain was limited to acquiring land for “public purpose” such as roads, railways, canals, and social purposes State-run schools and hospitals. The Act, however, added the words “or Company” to “public purpose” to distinguish land acquisition by the State for “public purposes” from land acquisition by the State for “a Company”. Moreover, acquisition of land for “Companies” was restricted to Railway Companies, until by an amendment effected in 1933, acquisition was permitted for “the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith.”

3.4 The ambit of the LA 1894 was then significantly expanded by a number of amendments in 1962 which permitted acquisition for a Company “which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose”.

3.5 The amendments made in 1984 in the LA 1894 extinguished any differentiation between acquisition for a State purpose and “acquisition for a private enterprise” or “State enterprise” by amending section 4 of the original Act to insert the words “or for a Company” after “any public purpose”. The Courts have interpreted this amendment to mean that any notification of acquisition issued under section 4 need not specify whether the acquisition is for a “public purpose” or for “a Company”. This opened the floodgates to acquisition of land by the State for Companies. And this in turn has unleashed the tribal and rural backlash that has caused the current decision of the Government to replace the 1894 Act with an altogether new Act.

3.6 However, instead of reverting to the classical concept of Eminent Domain or diluting it, the present Bill extinguishes the distinction in the original 1894 Act between acquisition by the State for a State purpose from purchase of land by a Company for a private purpose by including “Public Private Partnership projects” and “private

companies” in the definition given in clause 2(1)(b) and (c), as well as 3(za)(vi)(B) and 3(za)(vii) respectively, subject only to their producing “public goods or the provision of public services” and “the provision of land in the public interest”, it being entirely left to the executive to determine what is the “public interest” or “public goods” or “public services”. Moreover, after limiting what constitutes the “public interest” to clause 3, sub-Clauses (za)(i)-(iv) and defining “infrastructure project” in clause 3, sub-clauses(o)(i)(iv), the Bill then gives the executive the right, under clause 3, sub-clauses (za)(vi)(A), to determine other purposes where it deems that “the benefits largely accrue to the general public”, as also to define “any other project or public facility as may be notified in this regard” in any manner that the Central Government (but not, apparently, the State Government) deems fit.

3.7 Thus, instead of restricting land acquisition by the State to defined “public purposes” and “infrastructure projects”, the Bill throws the doors wide open for any kind of land acquisition by the State for “Companies”, whether these be State enterprises, private enterprises or public-private partnerships. Such a wide ambit for discretionary action by the executive amounting to arbitrariness can hardly be reconciled to the high objectives proclaimed in the Preamble to the LARR Bill, 2011.

3.8 The Committee have, therefore, addressed themselves to the question of whether such a wide definition of “public purpose” as to permit and even encourage land acquisition by the State in the interest of for-profit enterprises has legal sanction outside the sub-continent. Representatives of some of the social organizations and farmer organizations informed the Committee that India is perhaps the only country where the State acquires land for profit-making private and PPP enterprises. On being specifically enquired about the factual position in other countries the DoLR stated that they have no information about this. The Committee gathered position about land acquisition for private companies by the State in respect of few countries which is given below:

United States:

After the acquisition of land for private companies became highly controversial, and several State Supreme Courts, including those of Oklahoma, South Carolina, Illinois and Michigan, placed bans on the acquisition of land for private

companies, the then President George W. Bush issued Executive Order No.13406 on 23 June 2006 mandating the Government to acquire land only for “the purpose of benefitting the general public and not merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken”.

- Canada: The Canadian Expropriation Act of 1985 allows expropriation but only on an exceptional case-by-case basis where the “real right is required by the Crown for a public work or other public purpose”, but not to further the commercial interests of a private company.
- European Union: There is no provision in their laws for the acquisition by the State of land for private enterprises.
- Japan: Even for a key infrastructural project that sought to expand Tokyo’s Narita International Airport, the primary mode of obtaining land in the surrounding areas was through extensive negotiations and higher compensation packages offered to those who were willing to sell their land.
- Australia: There is provision for land acquisition in the Northern Territories but that is primarily aimed at protecting the interests of the local aborigines and their traditional rights to community ownership of land.
- China: All land is owned by the State and, therefore, it is allotment by the State rather than acquisition by the State which determines the purposes for, and entities to which, land is made available.

3.9 It may be seen that in all developed democracies, private purchase of land, not State acquisition, is the norm. There is no provision in their laws for the State acquisition of privately held land for profit-making private enterprises, nor, by extension, for public-private enterprises.

3.10 From the position enumerated above, it may be seen that in India alone, the “public purpose” is defined as to include virtually every form of enterprise, particularly after the amendments made in 1962 and 1984 in the LA 1894 Act. The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 seeks to permit, and even facilitate, the acquisition of land by the Government for private companies. On account

of large scale acquisitions, the magnitude of the displaced people has been highlighted by the Government of India appointed Expert Group Report (under the Chairmanship of D. Bandyopadhyay) on Development Challenges in Extremist Affected Areas, submitted to the Planning Commission in 2008. Extracts from the Report are reproduced below: -

“Apart from poverty and deprivation in general, the causes of the tribal movements are many: the most important among them are absence of self governance, forest policy, excise policy, land related issues, multifaceted forms of exploitation, cultural humiliation and political marginalisation. Land alienation, forced evictions from land, and displacement also added to unrest. Failure to implement protective regulations in Scheduled Areas, absence of credit mechanism leading to dependence on money lenders and consequent loss of land and often even violence by the State functionaries added to the problem.”

(para 1.4.5)

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“Land acquisition for Special Economic Zones (SEZ) has given rise to widespread protest in various parts of the country. Large tracts of land are being acquired across the country for this purpose. Already, questions have been raised on two counts. One is the loss of revenue in the form of taxes and the other is the effect on agricultural production.”

(para 1.9.1)

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“An official database of persons displaced / affected by projects is not available. However, some unofficial studies, particularly by Dr. Walter Fernandes, peg this figure at around 60 million for the period from 1947 to 2004, involving 25 million ha. which includes 7 million ha. of forest and 6 million ha. of other Common Property Resources (CPR). Whereas the tribals constitute 8.08% of country’s population, they are 40% of the total displaced/affected persons by the projects. Similarly at least 20% of the displaced /affected are Dalits and another 20% are OBCs. The resettlement record is also very dismal. Only a third of the displaced persons of planned development have been resettled.”*

(para 1.12.3)

3.11 The representatives of some of the social organizations also brought out the fact that the persons displaced on account of major projects including Government projects have not been settled or rehabilitated properly. The lands were acquired at nominal price. Affected people lost their livelihood and community living.

3.12 Summary of suggestions placed before the Committee.

- The **Delhi Metro Rail Corporation** in their note submitted as under:

“Acquisition of land on requests of private Companies for setting up of Special Economic Zones (SEZs) or for any other public purpose should not be permitted and provision of Section 2(1)(c), 2(2)(a), (b) be deleted.”

- Representatives of Sangharsh (Ms. Medha Patekar and others) submitted before the Committee that there should not be Government intervention in PPP projects.
- Representatives of Shramik Kranti Sanghathan in their deposition before the Committee stated:

“When a private company engages in any business activity, it does so with a definite profit motive. While a public purpose may be served, profit accrue to private party as well. How can the State assist private party to obtain profit.”

They were also against the transfer of land to the private companies.

- The representatives of the **All India Kisan Sabha** in their evidence submitted as under:

“facilitation does not mean Government should be the agent of any private entrepreneur. They can procure for themselves if they require.”

- **Bhartiya Kisan Sangha** in their evidence before the Committee submitted that Government should declare the purpose before the acquisition and it should never transfer land to a private company.
- Former Secretary DoLR while tendering evidence before the Committee was of the view that the Clause 2 of the Bill gives power to the Government beyond eminent domain.

3.13 During the course of examination, the Committee pointed out that the existing Land Acquisition 1894 is a pre-independence Act enacted within the times and principles of Government ‘Eminent domain’ concept. The Constitution of India has given Fundamental Rights to the people and the ‘Principle of Eminent Domain’ also needs revisit, particularly, with reference to large scale acquisition of land by the Government. On being asked by the Committee to comment upon the ‘principle of Eminent Domain’, the Department of Land Resources in their note stated:

“Article 31(A) of the Constitution provides for saving of laws providing for acquisition of estates etc. it states that law can be enacted for the acquisition of the land provided that it ensures payment of compensation at a rate which shall not be less than the market values thereof. Further, Entry No.42 of List III – Concurrent List of the Seventh Schedule of the Constitution relates to ‘acquisition and requisition of property’. So, the Central Government can enact the Land Acquisition, Rehabilitation and Resettlement (LARR) Bill, 2011 as per the above mentioned Constitutional provisions. Further, the LARR Bill, 2011 advocates acquisition by consent under Clause 3 (za).”

3.14 Asked further as to why the proposed legislation should acquire land for private companies/PPP projects and other modules for the projects which are for profits, the DoLR in a written reply stated:

“As the country is developing, the distinction between private and the Government sector is blurring. Many models of PPP, e.g., Build Own Operate Transfer (BOOT), Build-Operate-Transfer (BOT), Build-Rehabilitate-Operate-Transfer (BROT), Build-Lease-Transfer(BLT), etc. have been developed in the Country. Further, the ‘public purpose’ has been defined comprehensively in the Bill to ensure that land acquisition for only such projects is taken up where benefits of the projects accrue to a large population.”

3.15 When asked to list some of the countries comparable to Indian context which acquire land for the Private companies, the DoLR replied:

“The Countries like Pakistan and Bangladesh carry the same legacy for land acquisition. They use the same Land Acquisition Act, 1894 for the purpose of land acquisition for public purpose. However, there is no definite information on whether they acquire land for private companies or not.”

3.16 The DoLR added:

“The land acquisition Acts are prevalent in various forms around the world. For a developing country like India, sometimes Government has to intervene for the matters regarding land acquisition for various developmental projects. Accordingly, the LARR Bill, 2011 has been proposed. The Bill ensures land acquisition for specific purposes only. The ‘public purpose’ has been defined comprehensively in the Bill.”

3.17 Depositing before the Committee, the Secretary, DoLR submitted as under:

“...Our idea of facilitating the private sector for acquisition was that the distinction between providing public services through the private sector is now becoming very thin. There are lots of hospitals and schools which are being set up even by the private sector and by charitable trusts also.”

3.18 It may be seen from the above response of DoLR that they have not considered one of the important recommendations of the 'Report of the Working Group on Land Relation for Formulation of 11th Five Year Plan' 2006 (Bandyopadhyay Committee) which *inter-alia* recommended:

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- (c) Government land acquisition in the name of "public purpose" should be minimized to the extent possible, such as for providing only basic infrastructure like roads, sewage, etc. A stepwise approach should be followed starting from the drawing up of a comprehensive town and country plan. This plan should be shared with the public through local hearings. After the hearings, the plan should be put to vote and only if two-thirds of the public agree it should be passed. (*para 6.1.1*)

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RECOMMENDATION OF THE COMMITTEE

3.19 In view of the foregoing, the principal question that this Committee is required to address is whether there should at all be provisions in the law for the acquisition of land by the State for industrial, commercial or other for-profit enterprises or private companies. The three principal factors of production are land, labour and capital. Since there is no question of the State acquisition of labour or capital, even at the margin, why should the State at all be involved in acquiring land, which is the most precious and scarce of the three factors for production, for private enterprises, PPP enterprises or even public enterprises? When in the developed Countries like USA, Japan, Canada, etc, land is purchased by such enterprises rather than acquired by the State, why should India in the 21st Century persist with this anomalous practice? Therefore, "public purpose" in the draft Bill should be limited to linear infrastructure and irrigation, including multipurpose dams, and social sector infrastructure, such as schools, hospitals and drinking water/sanitation projects constructed at State expense, as defined in Clauses 3(o)(i)-(iv) and 3(za)(i)-(vi)(A), but not left open-ended as provided for in

Clauses 3(o)(v) and 3(za)(vi)(B) and (vii), as well as in Clause 2(1)(b) & (c) and 2(2)(b).

The Committee disapprove those sub-clauses of Clauses 2 and 3 that place wide discretion in the hands of the executive to define “public purpose” and “infrastructure projects” for for-profit enterprises. Accordingly, Clauses 2(1)(b) & (c), 2(2)(b), 3(o)(v), 3(za)(vi)(B) and (vii) may be deleted. However, all cases of land acquisition must entail obligations for adequate compensation, rehabilitation and resettlement to all land losers and other affected persons.

B. Powers of the Central Government vis-vis State Governments in legislation for sale/purchase of land and R&R provisions

3.20 Land is a State subject while 'Acquisition' comes under the Concurrent list. The Bill, apart from acquisition of land by the appropriate Government for its own use, hold and control, etc. seeks that R&R provisions will apply in the cases where any person or private company purchases or acquires land, equal to or more than one hundred acres in rural areas or equal to or more than fifty acres in urban areas. The relevant provisions of the Bill are as under:

"2. (2) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,—

(a) a private company purchases or acquires land, equal to or more than one hundred acres in rural areas or equal to or more than fifty acres in urban areas, through private negotiations with the owner of the land as per the provisions of section 42;

(b) a private company requests the appropriate Government for acquisition of a part of an area so identified for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose then the rehabilitation and resettlement entitlements shall be applicable for the entire area identified for acquisition by the private company and not limited to the area for which the request is made."

3.21 Summary of the suggestions placed before the Committee

- The **Government of Madhya Pradesh** in their written note submitted:

"The State Government would like to put on record its strong reservations about the purported assault on the federal principle by this Bill. While it is true that the subject "Acquisition and Requisitioning of Property" finds mention in the concurrent list of the Constitution (Entry no. 42), it is also true that the subject "Land" has been included under the "State List" wherein the State Government has unfettered Constitutional powers to enact laws and make rules to regulate land and land related matters (Entry no. 18). The Entry in the State list makes it abundantly clear that the State Government has sole powers to legislate laws pertaining to Land which includes "right in or over land, land tenures including the relation of landlord and tenant, and collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans; colonization.

And yet, the Bill as introduced in Lok Sabha has this section 42 which tries to restrict purchase of land. Something that has nothing to do with the Entry no. 42 of the Concurrent List and which comes wholly under Entry no. 18 of the State List. If at all any reasonable restrictions are to be imposed, the job is comprehensively within the purview and domain of the States. Purchase of land property is a statutory right and is a freedom made available to the Indian citizen and it cannot be curtailed.”

They also stated that the Clause 2(2) takes care of the Appropriate Government and Private Companies, but in the process local bodies and Authorities are ignored. They also apprehended that private companies may develop many smaller size projects in a row on the purchased land to flout the R&R provisions of the Bill.

- The **Government of Himachal Pradesh** in their written submission stated:

“The States are governed by democratically elected governments, responsible to their electorate. They are closer to the pulse of the people and have greater familiarity with the ground level situation. They can better safeguard the interest of the communities whose land is being acquired on the one hand and the requirements of projects conceived in the national interest on the other hand. The issues of compensation, relief and benefit sharing, local participation in decision making and addressing environmental concern, at the local level is a package best designed by States. Such negotiations can be best handled at the State level. Central legislation, should only lay down the broad guidelines. It should not end up in imposing fetters that compromise State autonomy or harm our federal structure on the one hand and result in loss to both communities and to development on the other hand.”

- The representatives of **CREDAI** while tendering evidence before the Committee submitted that the R&R provisions cannot be made applicable to private companies purchasing land from land owners/families who sell the same of their own volition and free accord. They were also of the view that if we try to bring private land acquisition under this ambit, then the entire township policies which every State Government has enacted to expedite supply of housing stock will be completely defeated. It will increase the cost of housing. Further, they also pointed out that there is an ambiguity as to how and when the threshold limit of

100 acre or more would be invoked. A private company may not purchase 100 acres or more in one go. The Bill is silent on the relevant issue as to whether these 100 acres have to be contiguous or otherwise.

- Elaborating further they stated:

“The provisions under Clause 2(2(a) of the Bill are sought to be made applicable to purchase made by private companies equal to or more than 100 acres. The said provision will negate the binding effect of a concluded sale contract, which is not permissible under law. We are contradicting one law for the other. Under section 10 of the Indian Contract Act 1872, an offer once accepted without force or fear and with free consent of parties competent to contract coupled with passing of lawful consideration for a lawful object results in a binding contract. Any attempt by the legislature to impinge upon financial viability of contracts to be entered into between private parties would also be in violation of fundamental rights enshrined under Article 19(g) of the Constitution of India, whereby citizens of India are permitted to carry on any trade, profession or business. Moreover, Section 54 of the Transfer of Property Act succinctly states that a sale of immovable property of value of one hundred rupees and upwards is concluded on the registration of sale deed and the transaction is complete and binding between the parties and the private parties cannot be forced or compelled by the State or a statute to amend the agreed terms. Therefore, keeping the contract open for 10 years is unconstitutional. Further, such transfers of land are pure commercial transaction finalised after due negotiation and deliberation between the buyer and the seller. All negotiations may not necessarily end up in concluded sales for a variety of reasons like disagreement on price, dispute in title of land, land being mortgaged, land in possession of tenant, etc. When the buyer and the seller exercise their right of choice to enter into a contract for an agreed consideration, the State or the statute cannot enlarge the said consideration as is sought to be done by the Bill in this case. We, therefore, again request that private land acquisition cannot be in the ambit of this Act.”

- The representative of **CII** during the course of evidence before the Committee stated that In negotiated price the totality of the premium is paid by the buyer and there is no need for anything beyond that negotiated price

- During the course of evidence the representative of **the Government of Maharashtra** was of the view that the R&R should not be applied unless somebody's house, living or livelihood is acquired. He also submitted that imposing R&R provisions is beyond the scope of the Bill if transaction is carried through negotiation without involving the Government.
- **PRS Legislative Research** (Dr. M.R. Madhavan) also questioned the Constitutional validity of Parliament's jurisdiction to make laws on purchase of land by a private company through private negotiations. They stated that Parliament may make laws only if there is acquisition of land. Laws related to purchase may be made only by State legislatures.

3.22 Response of the DoLR on the major issues:

- On the issue raised by the **Government of Madhya Pradesh** that reasonable restriction imposed on sale and purchase comes within the domain of the State Government, the DoLR stated that this has been provided to ensure adequate compensation to the displaced families in large projects.
- On the issue of Parliament's jurisdiction to make laws on purchase of land by a private company through private negotiations as it is the domain of the State Government, the DoLR stated that to ensure comprehensive R&R package to the affected families in large displacements, this provision is necessary. The Department does not intend to interfere with the States/UTs jurisdiction of purchase of land. However, threshold has been defined so that large scale displacements can be addressed.
- On the issue raised by the **Government of Himachal Pradesh** that Central legislation, should only lay down the broad guidelines it should not end up in imposing fetters that compromise State autonomy or harm our federal structure, the DoLR replied in a note that 'Acquisition of land' is a Concurrent subject in the Constitution. The LARR Bill, 2011 has been prepared to address various

concerns regarding land acquisition and rehabilitation & resettlement. The Bill is as per the constitutional provision. Further, under Clause 100 of the Bill, the State legislatures have been given the power to enact any law which may be more beneficial to the affected families.

3.23 Asked whether, the DoLR were sure that all clauses of the proposed Bill are in conformity with the spirit of the Constitution in terms of powers of the Central Government vis-à-vis State Governments to legislate on assigned areas, the DOLR in a written note replied that the LARR Bill, 2011 has been vetted by the Ministry of Law & Justice.

3.24 Part XI of the Constitution (Articles 245-255) provides the manner in which legislations are to be passed in regard to subjects mentioned in State and Concurrent Lists. The Committee enquired under provisions of these Articles of Part XI of the Constitution, under which the Government has sought to legislate the present Bill, the DOLR in a written note stated:

“Article 246 (2) of the Constitution clearly states that the Parliament has power to legislate on the matters enumerated in List III in the Seventh Schedule of the Constitution.”

3.25 The Committee further enquired whether the proposed Bill infringes the powers of the State Governments in any manner, the DOLR in a written note replied:

“The LARR Bill, 2011 has been vetted by the Ministry of Law & Justice.”

3.26 On being asked whether these provisions would withstand legal scrutiny, particularly with respect to Entries in State List vis-à-vis the Concurrent List under Seventh Schedule, the Department of Legal Affairs (Ministry of Law & Justice) replied in a note:

“In our note dated 19.8.11, the note for the cabinet on the subject was examined in this Ministry where the following Entries of List III (Concurrent List) of the Seventh Schedule to the Constitution have been mentioned which are related to the present Bill:-

Entry 42: acquisition and requisitioning of property;
Entry 20: economic and social planning;
Entry 23: social security and social insurance, employment and unemployment.

Under Article 246 (2) of the Constitution, both the Parliament and the Legislature of the States have power to make laws with respect to matters enumerated in the List III. In case of inconsistency between laws made by the Parliament and laws made by the Legislatures of the States, the law made by the Parliament shall prevail and the law made by the State Legislatures shall, to the extent of repugnancy, be void under article 254 of the Constitution. Accordingly, it may be concluded that all the provisions of the proposed Bill are in accordance with the scheme of the Constitution.”

3.27 During the course of evidence, a representative of the Department of Legal Affairs (Ministry of Law & Justice) stated as under:

“The first point is regarding relevant entries in respect of sale and purchase of agricultural land. If we go to Entry 18 of the State List, the power of sale and purchase of agricultural land has been given to the States. But under Entry 6 of the Concurrent List, in respect of power to transfer other lands both Parliament and the State Legislature can enact law on it. So far the sale and purchase of agricultural land is concerned, the question is whether Clause 42 regarding R&R will be applicable. The present Bill proposes that in the case of sale and purchase of certain acres of land, so far as non-agricultural land is concerned, it will apply. So far as the sale and purchase of agricultural land is concerned, I think that we have to read it along with Clause 22 along with Clause 42. So far as sale and purchase of non-agricultural land is concerned, there is no problem as such because this proposed Bill will be applicable as the matter falls under Entry 6 of the Concurrent List”.

3.28 The witness further added:

“Madam, I was speaking with respect to entry 6 of the Concurrent List which says about transfer of land. Transfer is a wide term and it includes everything. My humble submission is that this may be, if the Committee feels it appropriate, referred to the Attorney-General. While we interpret the particular entry into the Seventh Schedule, we contemplate on the language of the entry and then we determine the pith and substance about what is the true nature of the proposed Bill so that we can save it under the constitutionality. These are settled principles of constitution by the Supreme Court. The first issue relates to the sale and purchase and in that context my humble submission is that whatever further clarifications are required, we may also consult the learned Attorney General. I would also like to add that this proposed Bill is not in derogation of any existing law. So, we have to take into account all these things.”

3.29 In a post evidence reply, the Department of Legal Affairs (Ministry of Law & Justice) furnished a copy of the opinion of Attorney General of India given on 'the Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2011' dated 25.1.2012 dealing issues relating to State-vis-à-vis Concurrent subjects which *inter-alia* reads as under:

"It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of Parliament as well as the State Legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to override another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the Court that there is apparent overlapping between the two entries the doctrine of "pith and substance" has to be applied to find out the true nature of legislation and the entry within which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of "pith and substance". The doctrine of "pith and substance" means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object, scope and effect, is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of "pith and substance" has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made..."

RECOMMENDATION OF THE COMMITTEE

3.30 The Committee note that the proposed Clauses 2 (2)(a) and 42 of the Bill seek to provide resettlement and rehabilitation to affected families on sale/purchase of land on a mutually agreed basis where the sale/purchase of the land is equal to or more than 100 acres in rural areas and 50 acres or more in urban areas. DoLR have apprised the Committee that this provision has been kept for the welfare of the affected population through adequate R & R provisions even

when the land is not acquired but privately contracted. However, some State Governments and legal experts have submitted before the Committee that the sale/purchase of land and related matters come in the State List (vide Entry No. 18) of the Seventh Schedule of the Constitution, and as such conditionalities of R & R cannot be imposed by Parliament on legislation that falls within the ambit of State legislation. DoLR have responded that as the Bill has been vetted by the Ministry of Law and Justice, there are no outstanding Constitutional or legal issues to be settled. The Ministry of Law and Justice, the Department of Legal Affairs have furnished the opinion of the Attorney General on a related matter but not specifically referred the questions raised by the Committee to the Attorney General. Moreover, R & R conditionalities on private contracts of the sale/purchase of land might come in conflict with other Central legislation like the Indian Contract Act and the Transfer of Property Act. The Committee further note from the Department of Legal Affairs note dated 19 August, 2011 wherein introduction of the Bill was recommended that no where it has been mentioned that some parts of the Bill relate to State subject. The Committee also note that while the Preamble of the Bill refers to "acquisition", there is no reference therein to "purchase".

The Committee are in agreement with DoLR that affected people should get R & R facilities. However, considering that sale/purchase of land is a State subject, the Committee recommend that in place of Clause 2 (2) (a) and 42, the following Clause may inserted:

"State legislatures, bearing in mind the provisions of this Act, may by law provide for R&R provisions on sale/purchase of land. Limits/ceiling for the purpose shall be fixed by respective States keeping in view the availability of the land and density of the population."

C. Role of Institutions of self government established by Parts IX & IX A of the Constitution in land acquisition and R & R

3.31 Articles 243 G, 243 W and 243ZD of the Constitution (Parts IX & IX A) spell out the role of 'Institutions of Self Government'. The relevant Articles are as under:

243G. Powers, authority and responsibilities of Panchayats: Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as Institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

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243W. Powers, authority and responsibilities of Municipalities, etc.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

- (i) the provision of plans for economic development and social justice;
- (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243ZD: Committee for District Planning: (1) There shall be constituted in every state at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole".

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The Eleventh Schedule *inter-alia* contains the entries:- agriculture, land improvement, minor irrigation, PDS, etc. Similarly, Twelfth Schedule *inter-alia* lists out, urban planning, regulation of land use, planning for economic, social development, etc.

3.32 The Committee pointed out that the Constitution provides for the 'local institution of self government provided under Articles 243G and 243W in parts IX and IXA of the Constitution. Under these provisions States may endow role for Panchayats and Municipalities in the identified areas including land related matters and development. Similarly, Article 243ZD provides Constitution of District Planning Committees. Asked whether the Bill provides role of 'local institutions of 'self government' in the scheme of the LARR Bill, the DOLR in a note replied:

“The LARR Bill, 2011 already gives centrality to the rural and urban local bodies and the affected families in the matters of land acquisition and rehabilitation & resettlement. It requires consent of at least 80 per cent of the project affected families for certain projects for which land acquisition is required. Clause 11(2) of the Bill provides that ‘no notification shall be issued under sub-section (1) unless the concerned Gram Sabha at the village level and municipalities, in case of municipal areas and the Autonomous Councils in case of the Sixth Schedule areas have been consulted in all cases of land acquisition in such areas as per the provisions of all relevant laws for the time being in force in that area’. Sr. no. 11 (3) of the Second Schedule of the Bill specifically mentions that ‘the concerned Gram Sabha or the Panchayats at the appropriate level in the Scheduled Areas under the Fifth Schedule to the Constitution or, as the case may be, Councils in the Sixth Scheduled Areas shall be consulted in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force as per the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and other relevant laws’. Further, Clause 41 provides for the Constitution of rehabilitation and resettlement Committee at the project level. This Committee among other will have the Chairperson of the Panchayats or municipalities located in the affected area or their nominees and the Member of the Parliament and Member of the Legislative Assembly of the concerned area or their nominees as its members. The provision of Collector has been prescribed only at such places where Government representation is essential and required.”

3.33 Asked whether the concept of ensuring centrality of institutions of self government was in LARR Bill at time of drafting it, the DoLR in a note stated:

“The centrality of the institutions of Self Government has been kept in mind while framing the LARR Bill, 2011.”

3.34 The Committee further pointed out that the Ministry of Panchayati Raj has informed that they have also conveyed their suggestions making LARR pro-Panchayats. Asked as to whether the views of Ministry of Panchayati Raj were considered while formulating the LARR Bill, 2011, the DoLR in a written note informed:

“The suggestions of the M/o Panchayati Raj have been taken into consideration while finalizing the Cabinet note for the LARR Bill, 2011.”

RECOMMENDATION OF THE COMMITTEE

3.35 The Committee note that while the Bill provides a role for local institutions of self-government, established under Parts IX and IXA of the Constitution in regard to land acquisition and rehabilitation and resettlement proceedings, this role is limited to consultation but does not ensure the centrality of these institutions, as well as the Gram Sabhas and equivalent bodies in urban areas, in the planning and implementation of the Bill, with a view to making the entire process of land acquisition and R & R participative, transparent and pro-people in accordance with the letter and spirit of Articles 243G and 243W of Parts IX and IXA of the Constitution. The Committee recommend that the Preamble to the Bill be amended to read as follows:

"A Bill to ensure, in concert with local institutions of self-government and Gram Sabhas established under the Constitution, a humane, participative, informed, consultative and transparent process for land acquisition..."

This would set the stage for the substantive amendments to specific Clauses of the Bill, as elaborated in the relevant subsequent recommendations of this Report, aimed at according primacy to the institutions of local self-government, in association with the bureaucracy and technical experts concerned, by vesting in these Constitutional bodies the principal responsibility for acquisition, rehabilitation and resettlement. In particular, it may be noted that under Articles 243G and 243W of Parts IX and IXA of the Constitution, State legislation is required to specifically empower local institutions of self-government to undertake both planning and implementation of "economic development and social justice". Since any land acquisition necessarily involves economic development and social justice, it follows that the LARR Bill must provide for State legislation and, where required, Central legislation to mandate the role of the panchayats in rural areas in respect of LARR, and that of the municipalities and metropolitan authorities in the urban areas. Moreover, conformity must be ensured with

Article 243 ZD which provides both for the mandatory establishment of a District Planning Committee (DPC) in every district as well as procedures for undertaking the planning exercise by "consolidating" plans prepared by the panchayats at all levels and municipalities within each district prior to the submission of "draft district plans" to the State Government. In metropolitan areas, Article 243ZE would apply.

Most important of all is the need to provide in detail in the legislation for the mandated role of the Gram Sabhas in LARR. Beyond merely "consulting" Gram Sabhas, consensus or, at least, consent by the majority of Gram Sabha members (or equivalent body in urban areas where these have been constituted) should be obtained in all matters pertaining to LARR.

Therefore, with a view to ensuring that the perceptions, perspectives, priorities and problems of the affected persons are represented by their locally elected authorities and taken into account during the decision-making process, especially in regard to issues such as the exploration of land for acquisition, the review of rehabilitation and resettlement schemes proposed by the Administrator, enquiries into objections made to the land acquisition award, the final determination of compensation for land and other moveable and immoveable property or assets on the land to be acquired, any disputes over compensation, as also the finalization of the Rehabilitation and Resettlement Award, and issues to be referred to the Authority for resolution, the Committee recommend that State Governments may task the Collector and the President of District Panchayat or the Chairman of the Municipality or the Chairman of the District Planning of DPC, as the case may be, to jointly undertake these duties and to refer to the State Governments any issues they are unable to resolve among themselves.

3.36 The Committee further recommend that Government consider adding an additional Fifth Schedule to present Bill that would provide a model Activity Map relating to the devolution of LARR powers to the three levels of Panchayats in rural areas and municipalities in urban areas for consideration by the State Assemblies under Articles 243G and 243W, as well as suggest statutory powers for the empowerment by State legislatures of 'local institutions of self-government' and, most importantly, Gram Sabhas in rural areas and equivalent bodies in urban areas. The Committee have drafted such an Activity Map for incorporation in the proposed Fifth Schedule which may be seen at Annexure to this Report.

**D. Applicability of LARR Bill, 2011 in Scheduled Areas
(Schedules V and VI of the Constitution)**

3.36 The Report of the working group on Land Relation for formulation of 11th Five Year Plan (2006) has highlighted the hardship being faced by the Tribals as under:

"In the past few years, rural unrest has increased in most tribal areas. While displacement caused due to development projects have resulted in confrontation between authorities and local tribals, there are other factors such as growing indebtedness, forcible eviction of tribals from their land by non-tribals, conversion of land from communal ownership to individual ownership, increasing urbanization, treating tribals as encroachers in traditionally occupied forest land and lack of substantive possession by tribals of government land allotted to them and so on. In order to prevent further deterioration in the situation, there is an urgent need to look into the ownership of resources by tribals, especially the resources on which they depend for livelihood, such as land, forest and water.(para 3.3)"

3.37 Article 244 (1) of the Constitution specifies the Schedule V areas. The States in Schedule V are Andhra Pradesh, Gujarat, Chhattisgarh, Madhya Pradesh, Himachal Pradesh, Jharkhand, Maharashtra, Odisha and Rajasthan. In addition, provisions contained in Article 244(1) and the Clause 5 (1) in the Fifth Schedule to the Constitution empower the Governor of the State in which there are scheduled areas, to direct the application or non-application of any particular law to the scheduled area or application of a legislation with modification. Clause 5(2) empowers the Governor to make regulation for peace and good government in the scheduled area, particularly about prohibition or restriction on transfer of land, regulation of allotment of land to scheduled tribes and regulation of money lending to the scheduled tribes in these areas.

3.38 Further, Article 19(5) of the Constitution provides that for the protection of interests of Scheduled Tribes, restrictions under the extant legislation, on exercise of right to freely move in the country [19(1)(d)] and to reside or settle in any part of the Indian territory [19(1)(e)] may continue. Thus the intention of the framers of the Constitution was to ensure that the interests of the Scheduled Tribes were protected even by continuing the extant restrictions in terms of Article 19(1)(d)&(e) of the constitution. In fact, this provision together with what is contained in Article 244 (1) and the Fifth Schedule to the constitution form the foundation of the constitutional arrangements for the protection of the tribals.

3.39 Similarly, PESA Act, 1996 provides that the Constitutional provisions contained in Part – IX relating to Panchayats in Schedule V areas will be subject to provisions of section 4 of the PESA Act 1996. The section 4 provides *inter-alia* the role of Gram Sabhas in matters of approval plans/programmes for social and economic development, power to prevent alienation of land in Scheduled Areas etc.

3.40 Schedule VI of the Constitution applies to the States of Assam, Meghalaya, Tripura and Mizoram. Here, the emphasis is on creating autonomous councils (VIth Schedule pr.2) and giving legislative powers to District and Regional Councils (Vth Schedule pr.3) and administering justice in autonomous Districts and regions (VIth Schedule pr. 4,5). The Councils have revenue powers (VIth Schedule pr.8), sharing of royalties for mineral leases and licenses (VIth Schedule pr.9), control of money lending (VIth Schedule pr.10). There are specific provisions restraining the State from legislating. Equally consistent with the policy on the Vth Schedule, it is stated:

(i) In Assam, the Governor may declare that no State or Union law apply to the State or may do so with modifications and exemption (VIth Schedule pr.12(1)).

(ii) In Meghalaya, it is the President of India who shall decide whether Union laws shall apply to Meghalaya with whatever modifications or exceptions that are stated (VIth Schedule pr.12A(b)).

(iii) In Tripura and Mizoram, these powers of the non application of State and Union laws are reposed in the Governor and President (Tripura VIth Schedule pr.12AA(b) and(c)); Mizoram (VIth Schedule pr.12B(b)and(c)).

3.41 In the context of special constitutional provisions for protecting rights of tribals, in the Samantha case (1997) the Supreme Court explained the importance of the Vth and VIth Schedules:

"71. Thus, the Fifth and Sixth Schedules, an integral scheme of the Constitution with direction, philosophy and anxiety is to protect the tribals from exploitation and to preserve valuable endowment of their land for their economic empowerment to elongate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political Bharat."

3.42 Reflecting on the importance of lands to tribals the Court observed

"10. Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source of economic empowerment. Therefore, the tribes too have great emotional attachment to their lands. The land on which they live and till, assures them equality of status and dignity of person and means to economic and social justice and is a potent weapon of economic empowerment in social democracy."

3.43 Shri Rajeev Dhawan of PILSARC has given the following suggestion:

- The present LA and RR Bill 2011 should not be made applicable to Scheduled and Tribal Areas under the Vth and VIth Schedule of the Constitution of India.
- The concern of Bhuria Committee Report on "extending the provisions of the Constitution (74th Amendment) Act, 1992 to Scheduled Areas should be reflected in the Bill which recommended to ensure that tribals and tribal areas proceed to device their own progress in a way that is non-exploitative, without giving advantages to others at their expense.

3.44 During the course of examination of the Bill the Committee pointed out in spite of the Constitutional provisions for protection of Scheduled Tribes/tribals, the LARR Bill does not make specific and self contained provision in this regard. For instance, proviso to clause 2 (1) provides as under:

"Provided that no land shall be transferred by way of acquisition, in the scheduled Areas in contravention of the law relating to land transfer, prevailing in such Scheduled Areas."

3.45 On being pointed out by the Committee that above proviso was insufficient to protect the rights of tribals in the Scheduled areas and a specific clause needs to be brought in the Bill elaborating the Constitutional provisions, the DoLR stated:

"The aforesaid proviso of the Bill is strong and provides overriding powers to protect the rights of tribals in the Scheduled Areas. Further, the Constitutional provisions already have overarching effect on any law enacted by the Parliament/State Legislature. If any law is in contravention to these Constitutional provisions, it may be struck down by the appropriate court."

3.46 Similarly, the Second Schedule to the LARR Bill which provides elements of R&R entitlements for all the affected families (both land owners and the families whose livelihood is primarily dependent on land acquired) provides some details for dealing with Scheduled Tribes, provisions of PESA etc.

3.47 During the course of examination of the of Bill various organizations/experts who appeared before the Committee were of the view that as far as possible tribal land should not be taken without their consent and they should be made part of the developmental process. The tribals should be empowered and urgency Clause should not be used in tribal areas. Also in tribal area 'affected family' means the entire settlement. There is a 'zone of influence'. This has to be taken into account while acquiring land and providing R & R.

3.48 The representatives of the **Government of Chhattisgarh** submitted that if tribals are rehabilitated in some other area they will not be comfortable there. In this context they submitted that tribals should be given jobs.

3.49 **Adivasi Adhikar Manch** during the evidence before the Committee stated that only consultation with the tribals is not sufficient and the word "consulted" should be replaced by "consented" wherever it occurs in the Bill with regard to the Tribals.

3.50 On being pointed out by the Committee that there was need to revisit the provisions and carry out necessary changes in the Bill so as to make sure that the Bill fully protect the rights of tribals, ensures powers of Panchayats and Gram Sabhas in the process and gives due supremacy to the role of PRIs, the DoLR stated:

'The LARR Bill protects the rights of tribals, ensures powers of PRIs in the land acquisition process. Further, all the Ministries/Departments of the Govt. of India including Ministry of Tribal Affairs have been consulted before finalization of the Cabinet Note for the LARR Bill, 2011 as per the instructions of the Cabinet Secretariat.

3.51 State specific Issues

- In this connection, the State **Government of Meghalaya** requested the Committee to keep the Meghalaya outside the purview of LARR Bill. The representatives of the Government of Meghalaya during the course of evidence before the Committee submitted:

“.....This Bill was examined by the State Cabinet at a great length. It was appreciated by the Cabinet that the Bill seeks to provide higher monetary compensation to the land owners and also make resettlement and rehabilitation mandatory as per the statute and also give greater protection to Scheduled areas. Since the main objective of the Bill appears to give greater protection to the people and land owners in Scheduled areas, the State Government felt that perhaps the State Government could be given the prerogative of designing the land acquisition which will be conformity with the statute or laws regarding transfer of land in the Scheduled areas. Perhaps, we would be in a better position to do it and reconcile it with the land transfer because the Bill specifically stipulates that all acquisitions and transfers would be subject to the State laws regarding transfer of such lands in the Scheduled areas. The State Government felt that this could lead to some problems....”

- He further explained:

“The land tenure system is very different in Meghalaya than what it exists in other States. The land belongs to the community and clans and within clans to individual families. Land is allotted by the clan or the community to individual families.

So long as they are in occupation of that land they are the owners of that land. When they stop using that land, it reverts back to the community or, to the clan as the case may be. It is also a fact that the land tenure system varies from region to region. It is different in Khasi hills, slightly different in Jaintia hills and again very different in Garo hills. Management of these community lands and clan lands is again done by different establishments. The village durbars would be looking after the community land. The clan lands are administered by the respective clans. There is no single entity at the village level or at the grass roots level which looks after the management or administration of land.”

- Elaborating further, they stated:

“Another issue which could cause problems is that the new Bill provides that at the time of preparation of resettlement and rehabilitation packages as well as at the time of acquisition,

consultation with the Gram Sabhas would be mandatory and also with the municipal bodies. In Meghalaya, the 73rd and 74th amendments to the Constitution are not applicable. So, we do not have PRIs at the grassroots level, and therefore, we do not have Gram Sabhas. If this is made mandatory, we will have problems because we do not have corresponding bodies or entities within the State as of now.

So, it has been the considered view of the State Government and I have been specifically asked by the Cabinet to plead this before this Standing Committee that the proposed Act may not be extended to Meghalaya.”

3.52 Responding to the suggestions of Government of Meghalaya, the DoLR stated:-

- (i) The Bill is already PESA compliant.
- (ii) The Bill provides for comprehensive land compensation and rehabilitation and resettlement package. Special packages for Tribals under Schedule II may also be considered.
- (iii) Clause 102 of the Bill provides for Rule making power to the appropriate Government. So, the details in this regard may be provided in the Rules to be framed under the Act.
- (iv) The LA Act, 1894 is already prevalent in the State of Meghalaya. The LARR Bill, 2011 proposes to replace LA Act, 1894 only. However the State Government is free to make amendments to its law, once the new Act comes into force.”

3.53 Apart from States in Schedule V & VI, the **Government of Nagaland** also in a written note informed that in view of Article 371 A of the Constitution, the proposed Act of Parliament may not be made applicable to the State of Nagaland. Responding to the suggestion of the Government of Nagaland, the DoLR stated:

“Article 371A of the Constitution inter-alia provides that no Act of Parliament in respect of ‘ownership and transfer of land and its resources’ shall apply to the State of Nagaland unless the legislative assembly of Nagaland by a resolution so decides. The State Govt. has full powers to decide on the applicability of the LARR Bill, 2011.

RECOMMENDATION OF THE COMMITTEE

3.54 The Committee note that the provisions of the LARR Bill 2011 in respect of areas covered under Schedules V and VI of the Constitution have not been dealt with separately but through provisos to some of the clauses besides being mentioned in the Schedules of the Bill, particularly the Second Schedule. Given that according to the 2011 census there are 84.3 million people living in Scheduled Areas, prominent among them being the tribal population which permanently live in hills and forest areas, with most having remained the most backward on every index of human development, including education and health and nutrition, it is important that the LARR Bill focus separately and specifically on the Schedule V and VI Areas. Reports of various Committees appointed by the Government from time to time, particularly the Bhuria Committee Report of 1995 and the Bandyopadhyay Committee Reports of 2006 and 2008, have drawn attention to the socio-economic deprivation of the tribal people and sought to identify the causes of the widespread tribal unrest, the alienation of tribal land being among the principal causes of such unrest. Therefore, the Committee would like the Government to amend the Bill to incorporate the following points:-

- (1)** The Bill should stress that as far as possible there should be no alienation of land or any land acquisition in Scheduled Areas. Where public purpose projects are unavoidable, special provision should be made for increased compensation and resettlement and rehabilitation provisions that enforce stricter conditions such as relocation in a similar ecological location, with communities being mandatorily relocated together so as to preserve the economic opportunities, language, culture and community life of the tribal communities. Further it should be ensured that the consent or approval by majority of Gram Sabhas and Autonomous District Councils is taken and not limited merely to consultation with them. There is need for neutral persons to watch the proceedings of discussions within the Gram Sabhas/ADCs to ensure that the whole process is transparent and takes care of all related issues for the benefit of the Scheduled Tribes.

- (2) The provisions of the PESA must be strictly observed and indicated in all related provisions in the LARR Bill, particular care being taken to ensure that Panchayats at the appropriate level and the Gram Sabhas are specifically endowed with powers to prevent alienation of land and to take appropriate action to restore any unlawfully alienated land, as provided for in Section 4m (iii) of PESA. Other critically important PESA provisions that should through appropriate language be included in the Bill are those relating to:**
- (i) the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution, as provided for in Section 4 (d) of PESA;**
 - (ii) Gram Sabha approval of the plans, programmes and projects for LARR as far other social and economic development, as provided for in Section 4(e)(i) of PESA;**
 - (iii) identification of beneficiaries for the receipt of R & R benefits, as provided for in Section 4 (e) (ii) of PESA;**
 - (iv) furnishing of a certificate of utilisation of R & R compensation from the Gram Sabha, as provided for in Section 4 (f) of PESA.**
- (3) The Bill must take particular cognizance of Para 3 of the Fifth Schedule which provides for the Centre to issue directions to the State Governments regarding administration in Fifth Schedule areas. Thus, the Central Government must become a full stakeholder in land acquisition proceedings in tribal areas, including Sixth Schedule areas and non-scheduled areas which have a substantial tribal population.**
- (4) Also there should be specific provision in the LARR Bill that implementation of the proposed legislation will not adversely affect the autonomy, rights and interests of Schedule VI States and Autonomous District Councils, whether established by the Centre or the States concerned.**

E. Special Provisions to safeguard Food Security (Clause 10)

3.55 Clause 10 of the LARR Bill seeks to provide special provisions to safeguard food security and puts the conditionality in respect of acquisition of irrigated and multi-cropped land. The provisions of the Clause are as under:

- (1) Save as otherwise provided in sub-section (2), no irrigated multi-cropped land shall be acquired under this Act.
- (2) Such land may be acquired subject to the condition that it is being done under exceptional circumstances, as a demonstrable last resort, where the acquisition of the land referred to in sub-section (1) shall, in aggregate for all projects in a district, in no case exceed five per cent of the total irrigated multi-crop area in that district.
- (3) Whenever multi-crop irrigated land is acquired under sub-section (2), an equivalent area of culturable wasteland shall be developed for agricultural purposes.
- (4) In a case not falling under sub-section (1), the acquisition of the land in aggregate for all projects in a district in which net sown area is less than fifty per cent of total geographical area in that district, shall in no case exceed ten per cent of the total net sown area of that district:

Provided that the provisions of this section shall not apply in the case of projects that are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like.

3.56 Summary of suggestions placed before the Committee

- The **Government of Bihar** with regard to the provision of food security suggested:-

“Chapter dealing with Food Security, is too sweeping and deserves a rather close scrutiny. There cannot be any doubt that food security is a concern that cannot be overlooked. But the way things have been projected and hedges built will ban all land acquisition in a State like Bihar, which abounds in irrigated, multi-crop areas. Even within a given State, intra-State imbalances might ensue, in the aftermath of this legislation. In case a given district has already hit Land Acquisition capping of 5% or 10% vide Clause 10(2) and Clause 10(4) of the Bill respectively, no further land acquisition would take place in that district. No further schemes, including schemes for concerted rural development, can be taken up in such districts.

The proviso to Clause 10 exempts linear projects such as railways, highways, major district roads, irrigation canals, power lines and the like. It is to be hoped that rural roads too will come within the purview of the aforesaid illustrative exemptions. It will be in the fitness of things if the same is explicitly included in the exempt list.”

- During the course of evidence, the representatives of **CREDAI** submitted before the Committee that if we create a ban on development of such agricultural land it will result in slum development.

- The **Government of Chhattisgarh** in their note suggested the following:
 - (i) *“Clause 10 would be impractical as it will be impossible to set up food processing industry or agricultural based industry in the appropriate area. It would also mean that areas which are well irrigated will be deprived of industrialization, urbanization or even better infrastructure. There would also be disputes over definition of 'multi-crop' land.*

 - (ii) *Section 10(3) states that whenever multi-crop irrigated land is acquired an equivalent area of cultivable wasteland shall be developed for agricultural purposes. This provision should not be made mandatory as it is difficult to find cultivable wasteland lying freehold. Also the arrangement for the later use of such converted land may be problematic due to locational disadvantage.”*

- Representatives of the **Government of Chhattisgarh** during the course of evidence submitted that instead of saying develop cultivable waste land say convert non-irrigated area to irrigated area and allow 5% of State instead of 5% of district.

- The **Government of Madhya Pradesh** in their written communication submitted as under:

“This entire chapter should be scrapped altogether. The idea of never acquiring irrigated multi crop land is obnoxious and impractical. The chapter is too inflexible to be part of any intelligent legislation. It does not esteem or defer to the exigencies of the times to come. This slams the doors of any development of a non-agricultural nature in districts like Hoshangabad and Harda and State like Punjab and Haryana or Western U. P. This will prove a great disincentive for irrigating the land. Practically one can't segregate irrigated land from unirrigated land for submergence

on canal construction of irrigation project. Similar is the position relating to highways or transmission lines. Enforcing it in the name of food security is something very far-fetched. Food security is less a challenge of production and more a challenge of access. An assured ability to acquire acceptable foods in socially acceptable ways is what the food security in India really means. As Amartya Sen said "there is no such thing as an apolitical food problem."

- The **Andaman & Nicobar Administration** in their note stated:-

"We have very little revenue land available. Most of area in the UT is covered under Forest. A part of Land under Revenue is also 'Deemed Forest'. Excluding these areas, we have areas close to sea, swamps, and intertidal areas only. It would be well-nigh impossible for getting any land defined as culturable waste in the UT."

They also suggested for defining the irrigated multi-cropped land.

- The **Ministry of Culture** has sought exclusion of places where archeological remains have been found from the purview of Clause 10.
- The **Ministry of Urban Development** with reference to Master Plan Delhi 2021 and impact of Clause 10 on it stated that in urban areas particularly Delhi and other metropolitan cities with limited scope for further expansion and no irrigated or multi-cropped land available, there is a need to exempt these areas from Clause 10.
- Pointing to the Clause 10(3), the Government of **NCT of Delhi**, stated that the time frame and by whom the culturable waste land will be developed is missing.
- The Ministry of **Agriculture** in their note stated that provision to acquire agricultural land under assured irrigation and multi-cropped land as a last resort should be with the stipulation that it would be the responsibility of acquiring agency to develop an equal extent of waste/degraded/barren land for agricultural purposes.

- Representatives of the **Bhartiya Kisan Sangha** during the course of evidence before the Committee stated that no cultivable land should be acquired and like SEZs, Special Agriculture Zone (SAZs) should be constituted.
- The representatives of the **Thirthshektra Vikas Parishad** during the course of evidence stated that Proviso to Clause 10 should not be applicable to acquisition done for the purpose of R&R of projects affected persons.

3.57 Other suggestions received were:

- It has failed to protect interest of farmers and those depending on land. Against total ban on acquiring multi-cropped irrigated land, the Bill provides for acquisition of 5% such lands though in rare cases.
- There should be no acquisition of agricultural land, wells, ponds and lakes etc.
- Clause 10 should be deleted.
- The condition mentioned in 10 (1) and 10 (2) should not be applicable in case the private purchase has taken place on a willing buyer willing seller basis (where some of the land is multi cropped) and some of the multi cropped land is to be acquired on partial basis.
- There should not be any cap on the purchase of irrigated multi crop land.
- New provisions for safeguarding the drinking water sources should be added in Chapter III.
- Clause 10 of the Bill acts as an exception to the rule permitting acquisition. It is fundamentally flawed. Sub-clause (3) provides for an equivalent area to be developed for agricultural purposes. This seems deliberately ambiguous as regards 'developed for whom?' This Clause does not in any way guarantee land for land.

- The clauses 10(2), 10(3) & 10 (4) on food security are counterproductive and likely to reduce the productivity of land as farmers will turn away from multiple cropping.
- The limit of 5 per cent. in Clause 10(2) and 10 per cent. in Clause 10(4) should be removed.
- The new Bill has relaxed its earlier proposal for total ban on acquisition of multi-crop land.

3.58 Response of DoLR on the aforesaid major issues

- On the concern of the **Government of Bihar** about possibility of a ban on all land acquisition in the light of the Clause 10 as almost entire State is multi cropped and irrigated area, the DoLR has stated that in view of the evidence regarding the safeguarding food security of the country, retention of Clause 10 of the Bill is essential.
- On apprehensions of the **Government of Chhattisgarh** about difficulty in setting up food processing industry or agricultural based industry in the appropriate area, the DoLR stated that this has sufficiently relaxed with cap percentage having been fixed.
- On apprehension of the **Government of Madhya Pradesh** about Clause 10 proving to be disadvantageous to areas connected with canals and irrigation, DoLR stated that Chapter III has special provision to safeguard food security. It restricts acquisition of irrigated multi-cropped land with certain conditions. Linear projects have been kept out of the purview of this provision. To strike a balance between development and food security such a provision is necessary.

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- On **Andaman & Nicobar Administration** observation's that it would be impossible to get any land as cultivable waste land in Andaman, the DoLR stated that as acquisition of land is a concurrent subject, States/UTs can amend the Act, as per their specific local conditions/requirements.
- On the suggestion of defining multi cropped area, the DoLR stated that it is a generic name and need not be defined.
- The DoLR has not accepted the suggestion of the **Ministry of Culture** for exclusion of areas where archeological remains have been found from the purview of Clause 10 stating that to ensure food security, Clause 10 of the Bill is proposed to be retained as such.
- On the suggestion of the **Ministry of Urban Development** about exempting urban areas particularly metropolitan cities where there is limited scope for expansion and no irrigated multi-cropped land available, the DoLR stated that as 'acquisition of land' is a concurrent subject, States/UTs can amend the Act as per this specific local conditions/requirements.
- On the suggestion of the **Ministry of Agriculture** that the onus to develop an equal extent of waste degraded barren land for agricultural purposes should vest with the requiring body and agricultural land under assured irrigation and multi-cropped land should be acquired as a resort, the DoLR stated that the Bill already provides for this.
- On the suggestion of non acquisition of agricultural land, wells, ponds and lakes the DoLR stated Clause 10 of the Bill already ensures that irrigated lands are acquired in specific circumstances only. Suggestion regarding the non-acquisition of wells, ponds and lakes etc. is not acceptable.

- On the suggestion that the condition mentioned in 10 (1) and 10 (2) should not be applicable in case the private purchase has taken place on a willing buyer willing seller basis (where some of the land is multi cropped) and some of the multi cropped land is to be acquired on partial basis, the DoLR stated Sale/purchase of multi crop land is not prohibited in the Bill.
- On the point that the new Bill has relaxed its earlier proposal for total ban on acquisition of multi-cropped land, the DoLR replied, Clause 10 of the Bill provides special provision to safeguard food security. The linear projects such as railways, highways, major district roads, irrigation canals, power lines and the like have been exempted from this provision. These are important infrastructure development activities which need to be exempted.
- On removing the 5% cap, the DoLR stated that to ensure food security, the limits prescribed in Clause 10 are required to be retained.
- In response to the suggestion that there should be specific agriculture zones on the pattern of industrial zones where only agriculture related activities should be permissible, the DoLR stated that the delineation of 'agricultural zones' is outside the purview of this Bill.

RECOMMENDATION OF THE COMMITTEE

3.59 The Bill defines food security exclusively in terms of multi-cropped irrigated land. The Committee note that according to the Economic Survey 2011-12, the output of coarse grains, pulses and oilseeds has declined by 3.7%, 5.3% and 6% respectively over the past year. Current data points to a persistent deficit in the production of coarse cereals, pulses and oilseeds in rain-fed dryland areas. This is a matter of deep national concern because it is the coarse cereals that provide the highest proportion of nutrition to the poorest and most deprived consumers in India. However, the concept of food security in Clause 10 of the Bill

is totally resting on multi-cropped irrigated lands alone ignoring the basic primordial importance of safeguarding and enhancing output in rainfed areas as a crucial component of the nation's food security. It may also be noted that after doubling oilseeds output in the decade of the Eighties, the rate of growth has slowed to the point where India is importing as much as half of its edible oil requirements. While the LARR Bill provides for multi-cropped irrigated land to be acquired only as a last resort, food security cannot only be limited to rice and wheat in the face of the imperative need for more nutritional coarse grains, pulses and oilseeds. The Committee, therefore, recommend that in Chapter III, all provisions regarding "irrigated multi-cropped land" be replaced by "any land under agriculture cultivation" so as to ensure safeguard for food security in a full measure.

3.60 Some of the States/UTs have brought out practical difficulties in enforcing 5 % district-wise limitations on acquisition of acquisition of land on the plea that this may halt development in some areas. Considering the fact that both food security and development are essential, the Committee recommend that the State Governments may fix the percentage restrictions District-wise or State as a whole.

**F. Exemption of Central Acts from Provisions of the Bill
[Clause 98 and Fourth Schedule]**

3.61 As per Clause 98 of the Bill, the proposed Act shall not apply to the land acquisition processed under various Acts in the Fourth Schedule. These acts are listed below:

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958.
2. The Atomic Energy Act, 1962.
3. The Cantonments Act, 2006.
4. The Damodar Valley Corporation Act, 1948.
5. The Indian Tramways Act, 1886.
6. The Land Acquisition (Mines) Act, 1885.
7. The Metro Railways (Construction of Works) Act, 1978.
8. The National Highways Act, 1956.
9. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962.
10. The Requisitioning and Acquisition of Immovable Property Act, 1952.
11. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948.
12. The Special Economic Zones Act, 2005.
13. The Coal Bearing Areas Acquisition and Development Act, 1957.
14. The Electricity Act, 2003.
15. The Railways Act, 1989.
16. The Works of Defence Act, 1903.

3.62 Clause 98 of the Bill provides as under:

"98(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 99 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government may, by notification, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total

period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament."

3.63 **Summary of the suggestions placed before the Committee:**

- The **Ministry of Culture** in their written submission to the Committee states

"Clause 98 of the proposed Bill takes away the powers of the Archaeological Survey of India to acquire lands in connection with the protection of monuments or preservation of an archaeological site. Presently, the ASI is empowered to exercise powers for the said purpose under Section 28 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 as amended, by invoking the provisions of Land Acquisition Act, 1894.

The Clause as referred above, proposed in the Bill appear to be ultra-vires of Article 49 of the Constitution and casts a duty on the State to protect the monument of national importance and other art objects.

The acquisition of land by the ASI may be necessary in light of the above Constitutional provision hence an enabling provision in the Ancient Monuments and Archaeological Sites and Remain Act, 1958 is made. But in the light of clause 98 of the proposed LARR Bill, it may not be possible for the ASI to adhere to the above constitutional mandate."

- The **Ministry of Railways** in their written note submitted that in most of the enactments specified in the Fourth Schedule, there is no provision relating to rehabilitation and resettlement. The Central Government, by notification under clause 98(3), may apply the provisions relating to compensation, rehabilitation & resettlement of the Bill to such enactments to bring them in uniformity with the provisions of the present Bill. Appropriate amendments will also be necessary in the respective Acts which have been placed in the fourth Schedule.
- The **Ministry of Road Transport & Highways** submitted that Clause 98(1) in the proposed LARR Bill, 2011 should continue without any qualification as proposed under provisions contained in Clauses 98(2) and 98(3) should not be made applicable to National Highways.

- The **Ministry of Coal** stated that the application of provision under Clause 98 in each case should be with the Administrative Ministry for the Acts in the Fourth Schedule. The required notification for the applicability of the compensation and R&R clauses of the Acts mentioned in the Fourth Schedule should be issued by the Ministry concerned only.
- The **Ministry of Defence** has suggested that the Cantonment Act, 2006 (Sl. No.3 of the Fourth Schedule) and the Works of Defence Act 1903 (Sl. No.16 of the Fourth Schedule) may be deleted from the Fourth Schedule.
- The **Government of Uttar Pradesh** in their written submission stated that Clause 98 of the Bill is 'discriminatory' as the Central Government may keep the projects of the central legislations out of the purview of LARR Bill, 2011. It may create resentment in various quarters and the purpose of the new Bill will not be served.
- Appearing before the Committee to tender evidence the representatives of the **Government of Madhya Pradesh** submitted as under:

"there are 16 legislations which are being temporarily protected which include even the SEZ Act, which gave birth to all these controversies on the question of land acquisition. National Highways Act has just four items for determining compensation, out which three are conditional. It is being protected, the Coal Bearing Areas (Acquisition and Development) Act, 1957 has six items listed for determining compensation and three are unconditional. So, these Central Acts are getting temporary protection. If at all protection was to be given, even temporary, to this legislation then, there are also many State laws, which have some provision for land acquisition. For example in Madhya Pradesh under Municipal Corporations Act, there is section 78 which gives power to the municipality to acquire land. Likewise, we have Land Acquisition Act, namely, Madhya Pradesh Land Revenue Code, 1959 there is section 246, it says that they have a power to acquire land, if in the villages abadi land is not available. So, there are many State legislations which would be requiring some kind of protection, like they have provided in Fourth Schedule."
- Sh. Ramachandran Pillai, of **All India Kisan Sabha** in his evidence before the Committee stated that Clause 98 should not be there in the Bill.

3.64 **Other suggestions received were:**

LARR Bill should apply to acquisition under the National Highways Act, 1956.

3.65 **Response of the Department of Land Resources on the aforesaid issues:**

- In response to the concern of the **Ministry of Culture** the DoLR stated that the Ancient Monuments and Remains Act, 1958 may be amended by appropriately mentioning the LARR Act in place of Land Acquisition Act, 1894 wherever it occurs.
- With regard to the submission of the **Government of Uttar Pradesh** that clause 98 is discriminatory, the DoLR clarified that Clause 98 of the Bill already provides that Central Government may by notification extend the benefits related to land acquisition and R&R to the Acts mentioned in the Fourth Schedule also. Further, Clause 97 of the Bill provides that the provision of this Act shall be in addition to and not in derogation of any other law for the time being in force.
- DoLR agreed with the **Ministry of Railways** that suitable amendments will also be necessary in the respective Acts mentioned in the Fourth Schedule.
- With regard to the suggestion of the **Ministry of Road Transport & Highways** to exempt it from the operation of Section 98(2) and 98(3), the DoLR is not agreeable as these matters are subject to operationalisation based upon context and circumstances prevalent at a particular time.
- Replying to the suggestion that this Clause should apply to National Highways Act, 1956 the DoLR stated that Clause 98 of the Bill already provides that the Central Government may by notification direct that any of the provisions of the Act relating to determination of land compensation and rehabilitation & resettlement will apply to the Act mentioned in the Fourth Schedule.

- Responding to the suggestion that a vast area of land acquisition would be kept out of the purview of the compensation and rehabilitation and resettlement through this clause, the DoLR stated in a note that the legislations mentioned in the Fourth Schedule have been kept out of the purview of this Bill due to certain specific requirements of land acquisition under those Acts. Clause 98(3) of the Bill already provides that the Central Govt. may, by notification, direct that any of the provisions of the Bill relating to determination of compensation and the rehabilitation and resettlement package may be extended to the cases of land acquisition under the enactments specified in the Fourth Schedule. So, the process of land acquisition may be according to these enactments but land compensation and R&R benefits will be as per the new Bill only.

3.66 On being asked as to why the Government has proposed to exclude these Central Acts, particularly in terms of providing compensation and R&R facilities particularly when it proposes to retain the power of acquisition of land under urgency clause, the DoLR replied:

"These Central Acts provide land acquisitions provisions specific to particular sectors. These sector specific concerns may not be addressed in a single Bill. However, Clause 98 of the LARR Bill, 2011 provides that the Central Government may, by notification, direct that any of the provisions of the Bill relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules may be extended to such Acts."

3.67 On being further asked by the Committee that will it not be a very difficult proposition to issue notifications in case to case basis, the DoLR stated:

"This notification will be not on case by case basis under one Act. Once a notification is issued for a particular Act, it will apply to all the cases of land acquisition under that Act, until and unless a further notification is issued with regard to that Act only."

3.68 On being pointed out by the Committee, that when the Ministry of Defence can manage without exemption from the proposed legislation, why there should be exemption to other Central Ministries the DoLR in their written reply stated:

"Due to special circumstances only certain Central Acts have been exempted but benefits of R & R and land compensation of the LARR Bill, 2011 can be extended to such Acts also. Ministry of Defence has requested that two Acts mentioned in the Fourth Schedule i.e. The Cantonment Act, 2006 and The Works of Defence Act, 1903 may be removed, so that acquisition for the defence purposes is done as per LARR Bill, 2011. Their request may be accepted. As regards to other Acts mentioned in the Fourth Schedule, the Ministries/Departments have supported the inclusion of their Acts in the Fourth Schedule."

3.69 During the evidence, the Committee pointed out that through 16 Central Acts placed in Fourth Schedule about 95 % of the land acquisition by the Central Government would be outside the scope of the Bill defeating the very purpose of legislation. On being asked about its justification particularly for determination of compensation and rehabilitation & resettlement, the Secretary, Department of Land Resources stated during evidence:

"There is a slight difference in enmass acquisition and row acquisition. The row acquisition is like roads, railways, power supply and all where a very little land is being acquired. The reservation of these concerned Ministries is that if we are to apply R & R to them, then they will have to provide that infrastructure which we have mentioned in Schedule III which is extensive. For rehabilitation, they will have to set up a school, community centres and other facilities like post offices, roads, etc. Now, for a small chunk of land they say that if we have to be governed by R & R facilities as per the Bill, then it will not serve the purpose. That is why, these Acts were actually considered and we thought that row acquisition should not actually form part. Nevertheless, the government has kept the powers with itself that in case it is required that under Section 98, we can make these R & R facilities applicable to these Acts."

3.70 On being asked by the Committee that State Governments would seek similar exemption of their legislations, the DoLR replied that no State Government have requested the Department for inclusion of their State-laws in the Fourth Schedule.

RECOMMENDATION OF THE COMMITTEE

3.71 The Committee note that Clause 98 of the Bill seeks to exempt applicability of the provisions of the Bill for the 16 Central Acts included in the Fourth Schedule to the Bill. The list, *inter alia*, includes the Cantonment Act, 2006, The Works of Defence Act, 1903, The Electricity Act, 2003, The National Highways Act, 1956 and the SEZ Act, 2005. Various organizations and State Governments

brought out before the Committee that by keeping out the 16 Central Acts outside the purview of the Bill, under which Central Government acquires land for Central Projects, almost 95 percent of land acquisition would be outside the purview of the Bill. Similarly some of the State Governments submitted before the Committee that while Central Government seeks to exempt all Central Acts from the purview of the Bill, they want to impose it on the State Governments. The Ministry of Defence in their submission before the Committee submitted that two Acts, namely, the Cantonment Act, 2006 and the Works of Defence Act, 1903 presently part of the Fourth Schedule may be brought under the purview of the Bill. The Committee are not convinced by the argument of the DOLR that under the provisions of the Bill, Central Government has powers to apply the provisions of LARR Bill to these Acts by issuing notification in case to case basis. The deposition of the Secretary, DOLR was also not convincing that these Acts have been kept outside the purview of the Bill on the plea that there is a difference between the row acquisition and *en mass* acquisition. Inclusion of SEZ Act, 2005 in the Fourth Schedule is a case which doesn't go well with the argument of DOLR at all as under this Act en mass acquisition in thousand acres is done. Upto the March 2012, 587 approvals have been accorded for formation of SEZs.

3.72 Considering these facts, the Committee strongly recommend that there is no need to exempt any of these Central Acts from the purview of LARR Bill and the Fourth Schedule and Clause 98 be deleted. To bring these 16 Central Acts at par with LARR Bill, these Acts will require amendments. The Committee, therefore, recommend that along with the passage of LARR Bill, necessary amendments should also be made in these 16 Central Acts, particularly for the purpose of land compensation, provisions of R&R entitlements and provisions of infrastructural facilities to the land owners/affected families.

G. Miscellaneous

(i) Applicability of LARR Bill vis-à-vis existing Acts relating to Land Acquisition

3.73 Clause 97 of the Bill provides that ‘the provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force.’

3.74 Further Clause 100 of the Bill provides as under:

“Nothing in this Act shall prevent any State from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act.”

3.75 In response to various suggestions regarding the Bill, DoLR stated that the concerned State Governments can make rules or amend the Act according to their needs. Similarly, the Concerned State Governments shall prepare their rules for implementation of the Act. The Committee find that Clause 97 of the Bill is not clear to the extent that if the Central and State Governments continue to enforce their existing Acts, what would be the fate of the proposed legislation? Similarly, under LA Act, 1894 all States were eligible to make amendments in the Act to meet their requirements. However, the present Bill puts a condition that the State Governments can make amendments over and above the proposed compensation and R&R components. The Committee trust that DoLR must have examined the legality of this changed position with reference to role and powers of Central vis-à-vis State Governments.

3.76 The Committee would, therefore, like the DoLR to review these Clauses to ensure that these facilitate proper implementation of the proposed legislation in letter and spirit and their varying interpretation does not affect the well intended legislation.

(ii) Issues relating to land for mining on lease

3.77 Various individuals, social organizations and stakeholders in their submissions before the Committee brought out that there is urgent need to regulate the land use for mining and provide adequate compensation/rehabilitation to the affected people. In this context, the Department of Land Resources informed the Committee that 'lease' is not a part of the LARR Bill, 2011. In the meantime, the Ministry of Mines have introduced the Mines and Minerals (Development and Regulation) Bill, 2011 on 12 December, 2011. The Bill, *inter-alia*, provides restrictions on minerals, use usufruct and providing rights, damages, creation of National Mineral Fund, creation of Mining Regulatory Authority, Mining Tribunal, constitution of special courts, etc. The Bill has been referred to the Standing Committee on Coal and Steel. It has also been stated by DoLR that there is no clash between LARR Bill, 2011 which deal with land acquisition and R&R whereas mining lease, etc. and related issues have been dealt with in the Mines and Mineral (Development and Regulation) Bill. 2011 which is under examination by the Standing Committee on Coal and Steel. The Committee, therefore, have not gone into issues relating to land for mining on lease.

IV. DEFINITIONS (Clause 3)

4.1 Clause 3 of the Bill seeks to define various 'words'/'terminology' used in the Bill. The 'definitions' where the Committee have given their recommendations/ suggestions have been dealt with seriatim:

'Affected Area' and 'Affected Families'

4.2 Clauses 3(b) and 3(c) define the terms affected area and affected family respectively. The provisions are as under:

3(b) "Affected area" means such area as may be notified by the appropriate Government for the purposes of land acquisition.

3(c) "Affected family" includes—

(i) a family whose land or other immovable property has been acquired or who have been permanently displaced from their land or immovable property;

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants, share-croppers or artisans or may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) tribals and other traditional forest dwellers who have lost any of their traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 due to acquisition of land;

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land.

4.3 Summary of the suggestions placed before the Committee

- The **Government of Bihar** suggested that seller of goods and services to the people in the project area should be covered within the ambit of people working in the affected area under Clause 3(c)(ii),(iii) and (iv).
- The **Ministry of Panchayati Raj** pointed out that Clause 4 (2) and Clause 5 of the Bill are contradictory. Clause 4 (2) deals with impact on families and population residing in areas contiguous to or in the vicinity of the acquired land whereas Clause 5 while dealing with public hearing on Social Impact Assessment includes only the people in the “affected areas”. The Ministry has also stated that the definition of the term “affected area” under Clause 3 (b) includes areas earmarked for acquisition whereas “affected family” under Clause 3(c) speaks only about the families who own or are dependent on land for their subsistence. Thus, the Ministry has suggested that Clause 4 (2) and Clause 5 need to be defined differently for the purpose of Clause 5 (public hearing) and Clause 6 (publication of SIA). The Ministry has also suggested that necessary compensation and R&R may be considered accordingly by incorporating suitable provision in the First and Second Schedules of the Bill. The definition of “affected area” should specifically include not only those whose land is acquired and who are displaced, but also those areas adjacent to the project area or to the acquired area, which lose their livelihoods, their infrastructure facilities, etc.
- The **Government of Madhya Pradesh** suggested that under Clause 3 (c)(vi) period of three year is on higher side in view of experience of Narmada Valley Rehabilitation and it should be one year.
- **The Government of NCT, Delhi** gave the following suggestions:
 - (i) Clause 3(c)(i) – Even a licensee or lessee having any interest in the building would be entitled to rehabilitation and resettlement benefit because of extended words from 'or'

(ii) Clause 3(c)(ii) – Even a small time employee of any shopper establishment would become entitled to rehabilitation and resettlement benefits. How to determine such cases?

(iii) Further under in the Bill 'Urban Area' has not been defined under Clause 3(c)(iv). There is conflict between clauses (vi) and (i) as well as (ii). It appears that sub-clauses (i) and (ii) are meant for rural areas and clause (vi) is meant for urban areas. If that is so, then sub-clause (ii) appears to be an explanation to sub-clause (i). If these clauses relate to "rural areas", then this term needs to be defined. It is also required to be seen whether such a classification would withstand the test of article 14 of the Constitution of India."

- **Union Territory Administration of Andaman & Nicobar** submitted that under Clause 3 (c) (vi), a family residing in urban land is defined as affected family it does not include similarly placed families in rural areas. The definition should also include persons whose livelihood depended on the areas which are to be acquired i.e. persons working in the areas to be acquired but residing in other places. Further, they stated that it would be very difficult to prove occupation prior to 3 years on the notified land and may lead to plethora of litigations.
- The **Department of Atomic Energy** pointed out that there should be foolproof mechanism to identify such persons otherwise the Clause may be omitted.
- The **Ministry of Petroleum & Natural Gas** suggested that "Affected family" should clearly include those who own the land which is under acquisition. In case the benefit needs to be given to those who do not own the land but occupying the land, they cannot claim the same benefit as the land owners.

- The **Ministry of Panchayati Raj** suggested for inclusion of family residing in the land contiguous to the area proposed to be acquired to the extent affected after Clause 3 (c) (vi).
- The **Ministry of Urban Development** stated that identification of livelihood losers other than land and tenancy rights holders, share croppers will be subjective and difficult to implement particularly where migration is high with floating population. It would adversely affect the process of acquisition as it would be difficult to identify genuine/bogus claims. It is felt that target beneficiaries of R&R should be linked only with permanent/bonafide residents of the area, and not in general. Clause 3 (c), ii and vi. Clause 3 (x) ii and iv need to be relooked and reassessed in this connection.
- The **Ministry of Power** in their written submission stated that although the Bill has kept separate provisions for the Scheduled Tribes, it has not covered one very important issue - **Loss of customary rights**. The Bill has not addressed customary rights of tribal community for land use including shifting cultivation on Unclassified State Forests & Reserve Forests, as practiced in many North-Eastern States of India where people mainly depend on forest land and private land holding is very minimal. It is suggested that similar clauses may be incorporated in this Bill to address customary rights, where compensation is paid to the community (as **Rights and Privileges**) instead of being paid to an individual.
- During the course of evidence, **the Secretary, Tribal Affairs** stated:-

“In clause 3(c) (iii), we have touched the definition ‘affected family’ and that is Tribals and other traditional forests dwellers who have lost any of their traditional rights. Here we are touching two points. That is affected family. The word tribals mentioned may be substituted by Scheduled Tribes because the context here is this Forest Rights Acts. Here the word is used is Scheduled Tribes. Taking the context, Tribals should be substituted by Scheduled Tribes and I am contrasting the phrase Traditional Rights because Forests Rights are defined under Section 3(i) of this Forest Right Acts and there are around 13 Rights which are listed under Section 3 of the Forest Right Acts.”

The Secretary, **Tribal Affairs** further stated:

“While defining some of these Rights, the word ‘Traditionally’ has also been used and in some others, it has not been used. It was basically to avoid a possible situation where someone may say that only some of the Rights are covered here. I will give some examples.

I am reading Section 3(i)(a) which is one of the Forest Rights. The Right to hold and live in forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers. In this one right which is defined by Section 3(1)(a), nowhere the word ‘traditional’ or ‘traditionally’ has been used but when we move to section 3(i)(c) which is yet another forest right says right of ownership access to collect, use and dispose of minor forest produce which has been traditionally collected. Here the forest right are referred to the whole family rather than giving the impression that only some of them because we want to avoid this kind of thing. That is why, I said that Traditional Rights should be substituted by the phrase Forests Rights.”

- During the course of evidence, the former Secretary, DoLR while dealing with the term “affected family” referred to “displaced family” defined under Clause 3 (k) and pointed out that there was some confusion between “affected family” and “displaced family”. She stated:-

“Madam, among the definitions, they have said the ‘displaced family’. This is in Clause 3 (k) of the Bill. They have defined ‘displaced family’ as one, which will be resettled in the resettlement area.

The other point is that the use of the word ‘displaced person’ as residing in the resettlement area will create problem in the claiming of benefits under the Second Schedule. There are a few items, I have seen. Introduction to the Second Schedule says that these benefits are for affected families. It does not talk about displaced families. There again, you have two definitions. Which of them is eligible?

Then, in Item No. 4, there is subsistence grant for displaced families for a period of one year. But the heading says that it is for affected families. So, there is going to be some confusion in that.”

- Director, PILSRAC suggested deletion of three years limitation of working or residing in affected area and inclusion of ‘tribals’ and other traditional forest dwellers under “affected family”.

- The representatives of **Paramparik Machchimar Kruti Samiti** during the course of evidence informed that the ordinary fishermen, Machchimar who do not own any land and who for generations have been fishing for their livelihood, they have not been recognized at all unlike the landlord, who gets compensation for loss of his land in the case of acquisition.

4.5 Other suggestions received were:

- In Clause 3 (c) (iv) add “including seas and creek” after the word “bodies”.
- In Clause 3 (c) (vi) add “authorisedly by way of encroachment” after the word “residing”.
- In Clause 3 (c) (vi) after the words “years”, “or more” may be added.
- Fisher folk should be included in the definition of affected family, so that they also get all the benefits of the LARR Bill, 2011.
- Joint families should be brought within the definition of affected families.
- The definition of “family” should differentiate between the head of the family and any adult members within a household and define benefits to both separately, to avoid any ambiguity.
- Definition of 'affected family' under Clause 3(c): Sub Clauses (ii), (iv) and (vi) of Clause 3(c) specify that the person must have been working or residing in the affected area for three years preceding the acquisition, this limitation of three years should not exist.
- Inclusion of tribals and other traditional forest dwellers in the definition of affected family [cl. 3(c)(iii)] and person interested [3(x)(ii)]
- In clause 3 (c) (ii) it should be clearly mentioned what documentary evidence will be required to be counted as ‘affected families’.
- While making this provision, the Government overlooked one fact that in any area there is no record of such families, most of which do not even have any

voter ID or ration card and hence if such provision is made it would lead to a large number of false and frivolous claims to compensation and also lead to multiple litigations, thereby making acquisition process very expensive and lengthy for the company.

- Clause 3(c) of the Bill may leave out the families who are dependent on Govt. own land and water bodies which are not acquired but just resumed. So, it should be amended to include such families also.
- The family as defined in the Bill may lead to divorces as the adults would like to have full R&R package. So, only half the R&R package should be given to adults without spouses, children or other dependents.
- Affected people mentioned in Clause 3 should be changed to affected families.

4.6 Response of the DoLR on major issues:

- On suggestion of the **Government of Bihar** about covering seller of goods and services to the people in the project area within the ambit of “affected area”, the DoLR stated that Clause 3 (c) (ii) of the Bill already covers such families. It is drafted in broad enough manner to cover such situations.
- On suggestion of the **Ministry of Panchayati Raj** about need to clarify affected area in the context of Clause 4 (2) and Clause 5 of the Bill, the DoLR stated that Clause 4 of the Bill provides for SIA. The SIA will take into consideration the socio-economic impact upon the families residing in the adjoining areas of the land being acquired and the appropriate Government may specify the ameliorative measures required to be undertaken for addressing the impact. However, “affected family” includes specifically only those families whose land is lost or primary source of livelihood is affected due to land acquisition. Therefore, the scope of SIA and the affected families is different. The R&R benefits will be extended to such affected families.

- On the suggestion of the **Government of Madhya Pradesh** for reducing the period of residency in affected area from three years to one year, DOLR has stated that as per Clause 100 of the Bill States are free to extend benefits to the families who come within the limit of one year only.
- On the suggestion of the **Government of NCT, Delhi** about inclusion of licensee or small time employees for R&R purposes, the DOLR stated that the intention of the Department is to give R&R benefits to all project affected families whether licensee or lessee. On the issue that urban areas has not been defined and as such there is conflict between 3 (c)(i)(ii) and (vi), the DoLR stated that to ensure R&R benefits to the affected families in the urban areas and also keeping in view the requirement of urban areas this provision is necessary.
- On the issue of determination of small time employee of any shopper establishment for entitlement to R&R, the DOLR stated that any family whose primary source of livelihood stands affected by the acquisition of land, will come under the definition of 'affected family'. Determination will be done by the R&R Commissioner, Administrator appointed under the Act.
- On the issue that in Clause 3 (c) (vi) a family residing in urban area has been defined as affected family and it does not include similarly placed families in rural areas raised by **Andaman & Nicobar Administration**, the DoLR stated that to ensure R&R benefits to affected families in the urban areas and also keeping in view the requirement of urban areas this provision is necessary. On other suggestion for inclusion of livelihood losers on land to be acquired, the DoLR has stated that all livelihood losers working in the area notified by the appropriate Government whether residing in the affected area or outside will come under the definition of 'affected family'.
- On the suggestions of **Department of Atomic Energy and the Ministry of Urban Development** about the needs for foolproof mechanism for identification of affected persons, the DoLR stated that Clause 17 of the

LARR Bill, 2011 provides for preparation of rehabilitation and resettlement schemes by the Administrator, who will conduct a survey and undertake census of the affected families including livelihood losers. The details of identifying such persons may be provided in the Rules to be framed under the Act.

- On suggestion of the **Ministry of Petroleum & Natural Gas** that occupier of land should not be treated at par with the owner of land, the DOLR stated that definition of the 'Affected family' as per Clause 3 (c) of the Bill includes not only the land losers but livelihood losers also and it should be retained as such.
- On the suggestion of the **Ministry of Panchayati Raj** about inclusion of families residing on the land on contiguous to the area proposed to be acquired, the DOLR stated that Clause 3(c) of the Bill already covers the land losers and livelihood losers in the definition 'affected family'.
- On the issue raised by the **Ministry of Power** that although the Bill has kept separate provisions for the Scheduled Tribes, it has not covered one very important issue - Loss of customary rights, the DoLR stated that this is already covered in definition of "affected families".
- The DoLR has agreed to the suggestion of the **Ministry of Tribal Affairs** about substitution of 'Tribals' with 'Scheduled Tribes' and Traditional Rights' with 'Forest Rights'.
- The DoLR has not accepted the suggestion of **Director, PILSARC** about deletion of three years limit from Clause 3 (c)(ii) whereas on the suggestion of inclusion of 'tribals' and traditional forest dwellers under affected family, DOLR has stated that the definition of the 'affected family' ensures benefits are extended to tribals and other traditional forest dwellers also and gives all the benefits provided under the Act.

- The DoLR has not accepted the suggestion about addition of “seas and creek” and “authorized encroachments” under Clause 3 (iv). However, DoLR has agreed to the other suggestion about adding the word “more” after the words “years” wherever it occurs in Clause 3(c).
- On the issue of inclusion of tribals and other traditional forest dwellers in the definition of affected family, the DoLR stated the definition of the ‘affected family’ ensures benefits are extended to tribal and other traditional forest dwellers also and gives all the benefits provided under the Act.
- On the issue of specifying the documentary proof to be required for affected family the DoLR stated Rules to be framed under the Bill may provide details in this regard.
- On the apprehension that Clause 3(c) of the Bill may leave out the families who are dependent on Govt. own land and water bodies which are not acquired but just resumed, the DoLR stated that the LARR Bill, 2011 deals only with the land acquisition cases. It does not deal with the cases of resumption of land which is already with the Govt.
- The DoLR has agreed to change 'Affected people' to 'Affected family' in Clause 3.

RECOMMENDATIONS OF THE COMMITTEE

4.7 The Committee find the term "affected area" as defined in Clause 3(b) and ‘affected family’ as defined in Clause 3(c) of the Bill for the purpose of identification of families who are likely to be affected by the land acquisition and consist of both categories viz. land losers and livelihood losers. Various Ministries and individuals have brought out certain ambiguities which requires clarification for redefining the ‘affected family’. On considering the suggestions of the various Ministries and others, the Department of Land Resources has agreed for the following:-

- (i) 'Tribals' to be substituted by 'Scheduled Tribes'.**
- (ii) 'Traditional rights' to be substituted by 'forest rights'.**
- (iii) The words 'or more' may be added after the words 'years' wherever occurs in Clause 3(c).**
- (iv) 'Affected people' mentioned in the Bill to be changed to 'affected families'**

The Committee accordingly, approve the above amendments and these may be carried out in the Bill.

4.8 In Clause 3(c) (ii), after the word 'tenants', the words 'or any form of tenancy or usufruct right' may be added.

4.9 Similarly, the word 'has' appearing in Clause 3(k) may be replaced by the word 'needs' for creating rights in favour of displaced family.

4.10 In response to suggestion given by the Government of Madhya Pradesh for reducing the condition of living in affected area for three years to one year, DOLR stated that as per Clause 100 of the Bill, the States are free to extend the benefits to the families to come within the limit of one year. Apart from this, there are issues of using the 'affected family' vis-à-vis 'displaced family' in reference to Second Schedule of the Bill. To avoid any confusion or misinterpretation or varied interpretations of these definitions, the Committee expect the Department in consultation with the Ministry of Law to relook these aspects so as to synchronize various definitions used in the Bill.

Appropriate Government, Clause 3 (e)

4.11 Under Clause 3 (e) of the Bill, the term 'Appropriate Government' means:-

- (i) In relation to acquisition of land situated within the territory of, a State, the State Government;
- (ii) In relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government;
- (iii) In relation to acquisition of land situated within the Union Territory of Puducherry, the Government of Union territory of Puducherry;
- (iv) in relation to acquisition of land for public purpose in more than one State, the Central Government; and
- (v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government.

4.12 The **Government of Madhya Pradesh** with reference to Clause 3 (e) (iv) submitted before the Committee that this cannot be done in total disregard of local State Government and it should be "in consultation with the concerned State Government."

4.13 The DoLR has agreed to the suggestion of the **Government of Madhya Pradesh** stating that the Central Government would consult the State Government in such cases.

RECOMMENDATION OF THE COMMITTEE

4.14 The Committee recommend that existing Clause 3(e) (iv) may be replaced by the following:

"in relation to acquisition of land for public purpose in more than one State, the Central Government in consultation with concerned State Governments" and

Family, Clause 3(m)

4.15 Clause 3(m) of the Bill defines 'family' as under:

"family' includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him.

Explanation- An adult of either gender with or without spouse or children or dependents shall be considered as a separate family for the purpose of this Act."

RECOMMENDATION OF THE COMMITTEE

4.16 Considering the plight of widows, divorcees, etc. the Committee recommend that the following proviso may be added to the Clause 3(m) before

Explanation:

"Provided that widows, divorcees and women abandoned by families will be considered separate families and that every person in a joint landholding shall be considered a separate family"

Holding of Land, Clause 3(n)

4.17 Clause 3(n) defines 'holding of land' as under:

" 'holding of land' means the total land held by a person as an owner, occupant or tenant or otherwise"

RECOMMENDATION OF THE COMMITTEE

4.18 The Committee recommend that in Clause 3(n) after the word 'tenants' the words 'any form of tenancy' may be added.

Infrastructure project, Clause 3 (o)

4.19 Clause 3(o) of the Bill provides as under:

“Infrastructure project” shall include any one or more of the following, namely:—

(i) any project relating to generation, transmission or supply of electricity;

(ii) any project relating to telecommunication services;

(iii) construction of roads, highways, defence projects, bridges, airports, ports, rail systems or mining activities, educational, sports, health care, tourism, transportation, inland waterways, inland port, space programme, projects involving agro-processing and supply of inputs to agriculture, projects for preservation and storage of processed agro-products and perishable agricultural commodities and housing for such income groups, as may be specified from time to time by the appropriate Government;

(iv) water supply project, irrigation project, water harvesting and water conservation structures, water treatment system, sanitation and sewerage system, solid waste management system;

(v) any other project facility or public as may be notified in this regard by the Central Government.

4.20 Summary of the suggestions placed before the Committee

- The **Government of NCT, Delhi** suggested addition of the word ‘from time to time’ after the word by ‘Central Government’ in Clause 3(o)(v).
- The **Government of Madhya Pradesh** suggested to modify the Clause 3(o)(v) as:
"any other public projects which may be notified in this regard by the Central Government or the State Government in the Official Gazette".
- The **Government of Uttar Pradesh** suggested that instead of Central Government, the State Government should be given the power to notify any other project or public facility under Clause 3(o)(v).
- The **Ministry of Environment and Forests** suggested that the definition of infrastructure should also include environmental infrastructure facilities/amenities such as waste water treatment facility, sewage

treatment plant, Landfill sites and Effluent treatment plants, creation of urban green spaces and for meeting Environment (protection) Act,1972 and the healthy environment and dignified human living and integral to protection of environment and conservation of natural biodiversity of the country.

- The **All India Kisan Sabha** suggested that though the Bill defines “Infrastructure Project” it is not included either in the definition of “public purpose” or anywhere else in the body of the Bill.
- **Bhartiya Kisan Sangha** in their evidence before the Committee were of the view that the Clause 3(o)(v) cannot be left to the subjective satisfaction of the Government.
- The representatives of the **Ministry of Environment and Forests** in their evidence before the Committee that National Parks and Wildlife Corridors may be included in the definition of infrastructure. They also suggested including parks, gardens and green belts in the definition of infrastructure.

4.21 **Other suggestions received were:**

- In Clause 3 (o) (i) the term ‘distribution’ should be included to ensure last mile distribution of electricity.
- In Clause. 3 (o) (v) the word ‘Central’ should be replaced by ‘appropriate’.
- Though the Bill defines "infrastructure projects" it is not included either in the definition of "public purpose" or anywhere else in the Bill.

4.22 **Response of the Department of Land Resources**

- With reference to **Delhi Government of NCT, Delhi** suggestion of addition of “from time to time” after the Central Government in Clause 3 (o) (v), the DOLR has stated that it is already implied in Clause 3 (o) (v) and needs no further modification.
- In response to the **Government of Madhya Pradesh** suggestion for giving powers to the State Governments to notify any public facility as

infrastructure project, as has been vested with Central Government, the DoLR stated Clause 3(o) defines the 'infrastructure projects' for which land can be acquired. So, it will be appropriate if any other projects or public facility is notified by the Central Government only. "The DOLR has accepted the suggestion of All India Kishan Sabha of inclusion of 'infrastructure project' under 'public purpose'." The DoLR did not agreed to the suggestion of the Government of Uttar Pradesh that instead to Centre, the State Government should be given the power to notify public purpose.

- On the suggestion of the Ministry of Environment and Forests to include Environmental infrastructure and amenities in the definition of Infrastructure, the DoLR stated that Clause 3(za) of the Bill defines 'public purpose' comprehensively and the concerns raised in the suggestion have been covered in the aforesaid definition.
- On the suggestion of for inclusion of the term 'distribution under infrastructure project' to ensure the last mile connectivity in distribution of electricity, the DoLR stated that distribution is already included in 'transmission or supply of electricity'.

RECOMMENDATION OF THE COMMITTEE

4.23 The Committee find that sub-Clauses (i) to (iv) of Clause 3(o) lists out the specific sectors which would come in definition of 'Infrastructure' projects. The Committee feel that Clause 3 (o) (v) gives unlimited scope which is likely to be misused. Accordingly, the Committee recommend deletion of Clause 3 (o)(v) from the Bill.

Landowner, Clause 3 (r)

4.24 Clause 3 (r) of the Bill provides that “Land owner” includes any person:-

(i) whose name is recorded as the owner of the land or building or part thereof, in the records of the concerned authority; or

(ii) any person who is granted Patta rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or under any other law for the time being in force; or

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or

(iv) any person who has been declared as such by an order of the court or Authority.

4.25 **Summary of suggestions placed before the Committee**

- **The Ministry of Tribal Affairs** has in their note suggested the following:

“In sub Clause (ii) of Clause 3 (r) of of the Bill defining ‘land owner for entry “any person who is granted Patta Rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or under any other law for the time being in force; or” the following may be substituted :

“Any person who is granted Forest or Patta rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or any other law for the time being in force; or”

Similarly, in sub Clause (iii) of clause 3(r) for the entry “Who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or” the following may be substituted:

“Who is entitled to be granted Forest or Patta rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or any law of the State including assigned lands.”

- **The Ministry of Environment and Forest** suggested that under Clause 3 (r) (ii) and (iii), the Forest Right holders may be treated as holder of forest rights and not as land owners. Elaborating it further they submitted that the status of land on which forest rights have been recognized and titles are distributed continues to be forest land and as such for acquisition of such lands,

provisions of the Forest (Conservation) Act, 1980 and relevant orders of the Hon'ble Supreme Court of India will be applicable.

- Depositing before the Committee the representatives of the **Ministry of Environment and Forests** also submitted that they should be treated at par with other persons who are displaced otherwise. They can be compensated of livelihood Rights, but compensation for the value of land may not be given to them as the actual owner of land is the Government and Government may not acquire land.
- The **Government of NCT, Delhi** has suggested that a person who holds a title for the land by an instrument in terms of the Transfer of Properties Act, 1882 should be treated as land owner.
- The **National Commission for Scheduled Tribes (NCST)** submitted that the LARR Bill does not explicitly provide land compensation for person having 'title deeds' conferred under the Scheduled Tribes other Tribal Forest Dwellers (Recognition of Forest Right) Act, 2006 whose rights have to be foregone on account of resettlement. Therefore, it suggested that it should be specified in Clause 3 (r) (ii) that in all land acquisition process in Scheduled Areas, settlement of 'Tribal Rights' including Community Rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 be ensured (which should be kept recorded/updated) and land regularized under this Act must not be dispossessed/acquired except in the case of emergency wherein same category of land rights must be provided. The NCST has also pointed out that the Bill should also recognize resettlement/rehabilitation rights of share croppers etc. and other persons who derive their livelihood by providing services to land owners (especially if displacement is involved).
- The **Ministry of Coal** stated that whether holders of pattas of assignment of Government land are entitled for compensation on par with owners of private lands is the subject matter before the Hon'ble Supreme Court in the

case of the State of Andhra Pradesh vs. Mekala Pandu & others. The Ministry of Coal, has therefore, suggested that unless there is relevant enacted law to treat assignees of Government land on par with owners of private land, the same cannot be done under the proposed Land Acquisition and R&R Bill. Hence, words “including assigned lands” may be deleted.

- **Shramik Kranti Sanghathan** in their evidence before the Committee suggested that instead of any traditional rights, 13 types of Rights given under the ‘Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006’ should be included for the purpose of Clause 3 (r) (ii).

4.26 **Response of the Department of Land Resources on the major issues**

- The DoLR has not accepted the suggestion of the **Government of NCT, Delhi** about bringing the title holder under the Transfer of Property Act within the ambit of Clause 3(r).
- With regard to the suggestion of the **Ministry of Tribal Affairs** of including the word Forest Rights alongwith Patta Rights in Clauses 3(r)(ii) and 3(r)(iii), the DoLR stated that the legal status of the land allotted as per ‘Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006 remains forest rights. Any forest land is to be used for developmental purposes only as per provisions of the Forest Conservation Act, 1980.
- Responding to **MoTA** and **NCST**, the DoLR stated that the rights recognized under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been given due recognition under the LARR Bill, 2011. Further, Clause 11 (5) of the Bill already provides that the Collector shall undertake and complete the exercise of updating the land records before declaration is issued under Clause 19 of the Bill. Clause 3 (c) of the Bill defines the ‘affected family’. It includes such

families also who do not own any land but whose primary source of livelihood stands affected by the acquisition of such lands.

- On the suggestion of the **Ministry of Environment and Forests** that the Forest Right holder may be treated as holder of forest rights and not as land owner, the DoLR stated that for 'Forest Land' provisions of the Forest Conservation Act, 1980 and relevant orders of Hon'ble Supreme Court of India will be applicable.

RECOMMENDATION OF THE COMMITTEE

4.27 The Committee find merit in the suggestion of Ministry of Tribal Affairs for inclusion of Forest Rights in Clause 3 (r)(ii) and (iii) to ensure adequate compensation to the Scheduled Tribes. As regards the Ministry of Environment's concern that the owner of forest land is the Government and the forest rights holders cannot be treated as owners, the Committee feel that this technicality can be overcome by adding an explanation to the Clause stating that provision is in relation to payment of compensation to the forest/patta holders only.

Person interested, Clause 3 (x)

4.28 Clause 3 (x) of the Bill provides as under:-

“Person interested” means:-

- (i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;
- (ii) tribals and other traditional forest dwellers, who have lost any traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;
- (iii) a person interested in an easement affecting the land;
- (iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and
- (v) any person whose primary source of livelihood is likely to be adversely affected;

4.29 Summary of suggestions submitted before the Committee

- The **Government of NCT, Delhi** has suggested a subsisting easement right under Clause 3 (x) (iii).
- The **Ministry of Tribal Affairs** with reference to Clause 3 (x) (ii) has suggested the following amendments:-

“In Clause 3(x)(ii) of the Bill defining ‘person interested’, the word “Tribals’ should be substituted by the words “Scheduled Tribes”. Similarly the words “Traditional Rights” mentioned in the clause may be substituted by the words “Forest Rights”.
- The **Ministry of Coal** has pointed out that in Clause 3 (x) the definition of ‘person interested’ is sought to include the persons who obtained rights under the STs and Other Traditional Forest Dwellers (ROFR) Act. In that case, payment of charges for Compensatory Afforestation and Net Present Value should be waived, whenever Rehabilitation and Resettlement package is given to the persons is given to the persons having rights under ROFR Act.
- **All India Kisan Sabha** has suggested that the term ‘person interested’ should include tenants, share-croppers, agricultural workers, etc.
- The representatives of the **Bhartiya Kisan Sangha** in their evidence before the Committee suggested that instead of "tenancy rights under the relevant State laws" in Clause 3(x)(iv) it should be "tenancy rights or any other rights under the relevant State laws."
- In his evidence before the Committee Sh. Ramachandran Pillai of **All India Kisan Sabha** suggested clubbing the Clause 3(c) and 3(x).

4.30 Response of DoLR on the major issues:

- The Department did not accept the **Delhi Government’s** suggestion about subsisting easement right.

- As regards the **Ministry of Tribal Affairs** suggestion, the DoLR stated that Clause 3 (x) (ii) of the Bill already states that the rights recognized under the Scheduled Tribes and other Traditional forest Dwellers (Recognition of Forests Rights) Act, 2006 so the Rights will be recognized as per this Act only.
- On the suggestion of the **Ministry of Coal** about need for waiver of payment of charges for compensatory afforestation and Net present Value, the DOLR stated that Compensatory Afforestation and Net Present Value are subject matters of another Act. So, the suggestion is not acceptable.
- On the suggestion of inclusion of tenants, share-croppers, agricultural workers, etc. the DoLR stated that the term 'Person Interested' includes all persons claiming any interest in compensation to be made on account of acquisition of land including the tenancy holders and the person whose primary source of livelihood is adversely affected.

RECOMMENDATION OF THE COMMITTEE

4.31 As agreed to by the DoLR, the following words in Clause 3 (x) (ii) and in other Clauses of the Bill may be changed as under:

- (i) For 'tribals' substitute 'Scheduled Tribes'.**
- (ii) For 'traditional rights' substitute 'Forest rights'.**

Public Purpose
[Clause 3(za)]

4.32 Clause 3 (za) of the Bill defines “public purpose” as under:-

- (i) the provision of land for strategic purposes relating to naval, military, air force, and armed forces of the Union or any work vital to national security or defence of India or State police, safety of the people; or
- (ii) the provision of land for railways, highways, ports, power and irrigation purposes for use by Government and public sector companies or corporations; or
- (iii) the provision of land for project affected people;
- (iv) the provision of land for planned development or the improvement of village sites or any site in the urban area or provision of land for residential purposes for the weaker sections in rural and urban areas or the provision of land for Government administered educational, agricultural, health and research schemes or institutions;
- (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;
- (vi) the provision of land in the public interest for—
 - (A) use by the appropriate Government for purposes other than those covered under sub-clauses (i), (ii), (iii), (iv) and (v), where the benefits largely accrue to the general public; or
 - (B) Public Private Partnership projects for the production of public goods or the provision of public services;
- (vii) the provision of land in the public interest for private companies for the production of goods for public or provision of public services:

Provided that under sub-clauses (vi) and (vii) above the consent of at least eighty per cent of the project affected people shall be obtained through a prior informed process to be prescribed by the appropriate Government.

Provided further that where a private company after having purchased part of the land needed for a project, for public purpose, seeks the intervention of the appropriate Government to acquire the balance of the land it shall be bound by rehabilitation and resettlement provisions of this Act for the land already acquired through private negotiations and it shall comply with all provisions of this Act for the remaining area sought to be acquired.

4.33 Summary of the suggestions placed before the Committee

- The **Government of Bihar** in their written note stated as under:
 - “(i) Clause: 3(za) of the Bill provides for public purpose and delineates contingencies under which land could be provided. Nevertheless, the said contingencies do not include provision of land for social welfare schemes like Anganwadi Centres, godown for food grain storage, hostels for weaker sections, old age homes, Government buildings including Secretariat, Collectorate, Govt. Guest Houses, or offices and ancillary establishments to accommodate various Government departments and employees.”

- The **Government of NCT, Delhi** has pointed out that the classification of public purpose is too vague and general and includes all types of projects or purposes. It has given the following suggestions:
 - (i) Clause 3 (za) : Definition of ‘Public purpose’ : Provision for exceptional circumstances/rarest of rare cases may also be included.
 - (ii) Clause 3(za)(ii): Need to define “Public Sector Companies” and “Corporation”.
 - (iii) Clause 3(za)(iv): Need to define “Weaker Section”.
 - (iv) Clause 3 (za) (v): Land wherever found available for acquisition in proximity of site of natural calamity/disaster should be utilized for Rehabilitation & Resettlement. However, in situ development of land in post-disaster phase as per town planning norms may also be considered as a viable alternative.”
 - (v) Section 3(za)(vi)(B): Need to define “public goods” & “public services”. Since public purpose is an “inclusive definition” and not an “exhaustive definition”. Thus, there can be some other purpose which is in the larger public interest and would form part of the public purpose. There is no need to provide (vi) (A).

- The **Government Madhya Pradesh** suggested that the expression 'Public purpose' should also include provision of land required for various projects of State Government Public Sector Undertakings and Local

Bodies. They were also of the opinion that instead of itemizing 'Public Purpose' the pith and substance of the term should be incorporated. The term should denote, albeit negatively that the project does not have as its prime objective of serving a private interest and it purports to benefit the populace as a whole. It must mean something enforceable and prohibitory.

- The **Government of Uttar Pradesh** in their written note suggested:
 - (i) In PPP Projects of public use where land is proposed to be transferred on lease to the private developers, the condition of 80% consent is not practical. Big Bridges, airports, public hospital etc. are being developed by State Governments on PPP model. Because in Clause 3(za)(vi) and (vii) production of goods for public or public services are included so the condition of 80% consent for public purpose be removed.
 - (ii) There should be room for training institutes/polytechnics being opened for development of skills for rural areas under 'Public Purpose.' There should also be place for setting up infrastructure for smooth functioning of administration and delivery of justice."
- The Secretary, **Ministry of Power** during the course of evidence before the Committee sought for inclusion of Power projects under 'Public Purpose'. In this connection he stated:

"....the power projects, which are taken up particularly by public undertakings could be seen as projects of public purposes...."
- The **Ministry of Environment and Forest** suggested that Clause 3(za) (iii) should also include urban/rural greens/green belts, parks, and gardens, wildlife sanctuaries/National Parks, community reserves, conservation reserves so as to conserve the natural biological diversity of the country."
- The **Ministry of Petroleum and Natural Gas** suggested that Clause 3 (za) (ii) be expanded to cover refineries and oil installations including LPG

bottling plants, LPG import terminals, pipeline terminals, Product and crude oil storage terminals/depots, LNG terminals, etc.

- The **Ministry of Urban Development** suggested that urban infrastructures of water supply, solid waste management, sanitation, water drainage, public transport should also be included in public purpose.
- The **Andaman and Nicobar Administration** suggested that under Clause 3 (za) (ii) the definition could be broadened to include Public Private Partnership proposals.
- The **Ministry of Culture** pointed out that in the definition of public purpose, the piece of land where archaeological remains have been found and the acquisition of which is necessary for the protection of these remains has not been included. They suggested that it should be explicitly included along with other public purpose.
- **All India Kishan Sabha** suggested redefining the public purpose so that it remains confined only to genuine “public purpose”.
- Director, **PILSARC** in his submission suggested modifying the definition of public purpose to provide adequate safeguards to protect the interest of landowners and other affected families, especially in cases of private acquisitions. Further, he suggested that private acquisitions should only be permitted where necessary, private acquisitions should be subject to rehabilitation and resettlement provisions in all cases and 100% consent of all “affected families” should be taken in case of private acquisitions.
- **Bombay Chambers of Commerce & Industry** suggested that the definition of ‘public purpose’ should apply also to the cases of land acquisition for various sectors under infrastructure and industry and include private sector projects.

- **FICCI** suggested inclusion of all the infrastructure projects under public purpose which have been defined by the Government of India, Ministry of Finance.
- **CII** suggested for inclusion of large infrastructure projects like Delhi-Mumbai-Industrial Corridor or National Manufacturing Industrial Zone in the definition of Public Purpose.
- In clause 3(za)(vi) the definition of public purpose should mention local authority in second proviso. In Clause 3(zb) local authority should also be mentioned.

4.34 **Response of the DoLR on the major issues:**

- On the observation of the **Government of Bihar** that provision of land for social welfare schemes is not there in the public purpose, the DoLR stated 3(za)(vi)(A) of the Bill already provides that the appropriate Government may acquire land for purposes where the benefits largely accrue to the general public. This includes the elements mentioned by the State Government.
- The DoLR has not accepted the suggestion of the **Government of NCT of Delhi** of inclusion of exceptional cases under the purview of the Public purpose. On the suggestion of inclusion of Government companies or Corporations within the ambit of public purpose, the DoLR stated that companies have already been defined in the Companies Act. On the suggestion of defining weaker section under Clause 3(za)(iv), the DoLR stated that the Appropriate Government may define the 'weaker section', as per its need from time to time. This has to be kept flexible. As far suitability for land for R&R, DoLR has stated that SIA will determine the suitability of land. On the suggestion to define "public good" and "public service" the DoLR stated that Public Goods and Public services are well defined obvious terms and do not require further explanation.

- Responding to the suggestion of **Government of Madhya Pradesh** for inclusion of PSUs and corporation and local bodies for Land Acquisition under Public Purpose and instead of itemizing Public Purpose the pith and substance of the term should be incorporated, the DoLR stated that the existing definition of Public Purpose is more appropriate and should be retained as such.
- On suggestion of the **Government of Uttar Pradesh** about not applying 80% consent for PPP Projects as many State Governments are setting up hospitals, bridges under PPP Mode, the DoLR stated that to ensure transparent and participatory process in land acquisition, the definition of 'public purpose' provided in the Bill is necessary and vital safeguard.
- On the **Ministry of Power** suggestions for inclusion of PSUs under clause 3(za), the DoLR stated the existing clause addresses that concerns.
- Responding to the **Ministry of Environment & Forest** suggestion for covering green belts/parks etc. under the definition of 'Public Purposes', the DoLR stated that these have been covered under the definition of the 'Public Purpose' in Clause 3(za) of the Bill.
- Responding to the suggestion of the **Ministry of Petroleum & Natural Gas** for covering refineries and oil installations including LPG bottling plants, LPG import terminals, pipeline terminals, product and crude oil storage terminals/depots etc. under Clause 3(za) (ii), the DoLR stated that Clause 3(za) (ii) defines 'public purpose' comprehensively and the subjects mentioned in the suggestion have been covered in the aforesaid definition.
- On the suggestion of the **Ministry of Urban Development** for inclusion of urban infrastructure of water supply, solid waste management under public purpose, the DoLR stated that the Clause 3(za) (iv) of the LARR Bill includes provision of land for planned development or improvement of village sites or any sites in urban areas under 'public purpose'. Further,

Clause 3(za) (vi) of LARR Bill provides provision of land in public interest where the benefits largely accrue to the general public.

- On the suggestion of the **Ministry of Culture** to explicitly mention the land where archeological remains have been found due to which the acquisition of that land is necessary as public purpose the DoLR stated that such sites may come under the definition of 'public purpose' in Clause 3(za)(vi)(A) and hence no further action is required.
- Responding to the suggestion of **All India Kishan Sabha** for inclusion of infrastructure projects under public purpose, the DoLR stated that “Infrastructure Project needs to be included in the definition of Public Purpose.”
- On the suggestion for effective safeguards about protecting the interest of land owners in the LARR Bill as it is heavily biased towards private acquisition, the DoLR stated that the Bill provides land acquisition only for public purposes and also ensures comprehensive compensation and R&R package.
- On the suggestion of the **Andaman & Nicobar Administration** for broadening the definition of public purpose to include PPP Projects, the DoLR stated that the Bill already includes PPP Projects under Clause 3(za) (vi) (B).
- On the suggestion for inclusion of all land acquisition cases for various sector under infrastructure and industry including private sector projects, the DoLR stated that the ‘Public Purpose’ has been defined comprehensively in Clause 3 (za) of the Bill. However, ‘Infrastructure Projects’ needs to be specifically mentioned.

4.35 On the issue of bringing ‘Infrastructure Projects’ under the definition of ‘Public Purpose’ the Secretary, DoLR stated:

“...The first was about the definition of public purpose. Unfortunately, we admit that the word ‘infrastructure project’, which should have been included under public purpose, has not been included. These are little mistakes, which we have committed may be out of oversight.”

4.36 In reply to some queries, the Secretary DoLR further clarified:

“We will definitely have a look at the very good suggestion which has come to us. But our idea of facilitating the private sector for acquisition was that the distinction between providing public services through the government and through the private sector is now becoming very thin. There are lots of hospitals and schools which are being set up even by the private sector and by charitable trusts also. If they want to do something which is really for the public good, it is going to be examined at senior levels, at the SIA level when we do the study, the experts will try and determine whether it is being acquired for a public purpose or for profit, then the Chief Secretaries’ Committee will have a look into it, and 80 per cent of the people will have to give their consent. Only then the acquisition will take place.”

4.37 In reply to a question, a representative of DoLR submitted:

“Sir. Public purpose has to be decided at the time of SIA by the Expert Committee and by the Chief Secretary’s Committee depending on the circumstances of the cases. At that time, the Committee will decide it.”

4.38 The Committee wanted to know the specific comments of the DoLR on the suggestion received from various organizations/farmers organization that Clause 3(vi) and (vii) should only cover projects which mention projects having no profit motive and restricting PPP Model projects i.e. to say,

- (a) atleast 50 percent share of Government in profits of PPPs
- (b) ownership of PPP projects with Government

Responding to the above issues, the DoLR in their note replied:

"The 'public purpose' has been defined comprehensively in the Bill. So, the definition is proposed to be retained as such. The condition of 'no profit motive' is difficult to implement. 'No profit motive' will not be able to attract private investment which is needed so much for the development of the Country. Further, this may stall various developmental projects. The distinction between private and the Government sector is blurring in the Country as we proceed on the path of development. So, putting conditions of minimum share of the Government in the projects or ownership of the projects may delay such developmental activities."

4.39 On the observation of the Committee that the definition of 'public purpose' is too broad and it needs to be refined, the DoLR in their written submission stated that 'Public purpose' in the LARR Bill has been defined comprehensively to ensure against any type of arbitrary acquisition and should be retained as such.

**Provision of 80 percent Consent for land in public interest where the benefits largely accrue to the general public or PPP projects for the production of public goods for public or provision of public services.
(Clause (3za) (vi) and (vii))**

4.40 **Summary of suggestions placed before the Committee**

- The **Government of Bihar** suggested that in case of land acquisition for a private party, there must be a specific pre-condition that the Government would resort to acquisition only when the private party has procured land to the extent of 80%.
- The **Government of Madhya Pradesh** in their written submission stated that certain provisions in the Bill have the Potential for litigation and likely delays in implementation, such as – Proviso to Clause 3 (Za) which reads as provided the consent of at least eighty percent of the project affected people shall be obtained through a prior informed process to be prescribed."
They also submitted that 'Project affected people' is a very wide term and is not defined in the Bill.
- The **Government of Chhattisgarh** suggested deletion of First Proviso to Clause 3 (za) (vi) & (vii) that provides for obtaining consent of project affected people through informed process because land is acquired for public purpose and Gram Sabha are to be consulted before acquisition.
- The **Government of Maharashtra** suggested that when the acquisition is for purpose '2' which is essential for development industries and urbanization then it should not be necessary to have 80% consent of

project affected families for the purpose of acquisition. If Government acquisition becomes essential the proposed 80% consent of the project affected families should be changed to 51% consent of total/entire project affected families for the purpose of acquisition.

- The **DMRC** in their note submitted:

"The existing Land Acquisition Act, 1894 does not provide for land acquisition on behalf of Private Companies even for public purposes. However, the proposed National Land Acquisition and Rehabilitation & Resettlement Bill, 2011 section 2(1) (c) stipulates acquisition of land on request of private companies for public purposes. Government should not acquire any land for Private Companies for setting up of Special Economic Zones (SEZs) or for any other public purpose, and this provision should be deleted."

- The **Ministry of Power** suggested that Instead of 80% project affected families consenting for acquisition of land, it should be more than 50% project affected families consenting.
- The **Ministry of Commerce** made the following observation regarding the definition of public purpose:
 - (i) While it includes within the definition of public purpose activities like provision of urban sites, acquisition for planned development and improvement of any urban area, which would possibly cover industrial activity, it does not explicitly provide for planned, compact area based industrial development. Given the importance of manufacturing investment for the country, it merits seeking a clarification as to whether these categories include this purpose.
 - (ii) Public interest acquisition of land for an appropriate Government for a public purpose other than the narrowly defined categories like national defence, etc. That largely benefits the general public is permissible only if 80% of the project affected persons give their informed consent Land Acquisitions for government or public sector companies for infrastructure projects and for production of goods for the public or provisions of public services also fall in category. Thus to the extent this category permits land acquisition for industrial/commercial purpose it does so with certain restrictions that would raise the price of land and create impediments.

(iii) The provisions are unclear as to whether provision of urban sites, planned development, etc. undertaken by Government, which comes under the unrestricted category of public purpose, would permit use of private sector (say PP mode) by Government to fulfill its objectives. To the extent it does not, it would compel Government to undertake activities within the public sector, which it may not be best placed to undertake, with implications for quality and efficiency.

- The **Ministry of Panchayati Raj** in their written note stated:

"Section 3(za) (vi) of the bill gives the definition of the term "public interest" and includes a provision of acquisition of "land in the public interest for private companies for the production of goods for public or provision of public services".

It goes on to make provision for land acquisition for a private party where the private party has not been able to purchase the whole of the land it has earmarked for its project for 'public purpose'. This Ministry has reservations that, while the exercise of eminent domain on behalf of private companies for production of public services may be defensible, it would not be seen to be fair by the dispossessed in cases where the production of goods for public leads to profits from sale of the said public goods accruing to the private party. At worst, such definition and such exercise of eminent domain should be limited to public private partnerships where the profits accrue to government coffers. Further in regard to Schedule V areas, where PESA provides powers to the Gram Sabha to prevent alienation of land in order that they can preserve their community life, traditions and resources uninterrupted, and there is a virtual vacuum in the land market, and no such yardstick as a market price, the exercise of 'eminent domain' to alienate tribal land for purposes other than the community's use with the approval of the community have to be seen as an unethical and arbitrary use of state power. Exercising "eminent domain" to acquire and give land to private parties for development would be tantamount to preventing tribals from selling their land in accordance with their traditional customs. It would also be arrogating to the State the right of disruption of their community benefits and prerogatives which could cause great disaffection. In Schedule V areas especially, this Ministry feels that no provision for acquisition of land for private parties for public interest, whether goods or services, should be legislated and a proviso excluding Schedule V areas from land acquired for or by private parties should be appropriately included.

As to the requirements of land by private parties, especially for 'public goods', this Ministry would rely on its experience that purchase and acquisition of land at agricultural land use prices and the subsequent

conversion of land use in the hands of the private party causes a great outpouring of resentment against the government and would venture to suggest that government intervention to help a private party acquire land should be restricted to land where the use has already been concerted from agricultural to the new use, and this change in land use has been debated and widely published as part of a Regional Development Plan and a cogent land use policy. A Regional Development Plan would also reduce adhocism in development, leading also to greater transparency and accountability.

Ordinarily when an agricultural land is acquired, the nature of its use changes thereafter. Any development work which takes it away from agriculture impels the change in land use. This impacts the value of land during and after acquisition and consequently the requisitioning authority or the land receiving authority stands to gain on account of appreciation of land value. Obviously, this is at the cost of the land owner. There have been several examples, particularly in the recent past, where this has generated social tension and anguish among the people, particularly the erstwhile land owners as they get a sense of having been cheated on account of lower land valuation based on previous land use. Hence, in the interest of equity, fairness and social harmony, this Ministry feels that the Gram Sabha should be informed beforehand about the change in the land use classification consequent upon such acquisition and the resultant change in the valuation of land. If the change from Agricultural to 'settlement' or 'industrial' is declared up front to the Gram Sabha, debated, protested, adjusted and assimilated before a private party moves in for acquisition for the declared use, the Gram Sabha would be informed of it and mentally and otherwise perhaps even be prepared for it, and would be likely to get a price commensurate to the new use."

4.41 **Other suggestions received were:**

- There should be 100% consensus for a project, instead of 80% consent. There should be district/State/national level authorities with judicial powers to decide the public purpose type of land, rate, payment, land use change, return of unutilized land, rehabilitation etc.
- The more practical figure for pre-consent should be 50% for Government acquisition and not for private acquisition
- It is totally unclear as to how would 80% of the "Affected Families" be calculated. It would be highly absurd if the 80% would constitute mainly

labour and artisans and the landowners in the dissenting 20% considering that the number of labourers will mostly be more than the owners and definitely so in areas where big owners employ many labourers to cultivate their land. The decision would vest largely upon the consent of those who have no title to the land and benefits provided to them under the Bill, would lure them into providing such consent. This would amount to undue enrichment of the labourers at the cost of the owner.

- The provision for public consent should be applicable to Government/ PSU projects also. Consent of 60% is enough instead of 80%. Consent should be only from land owners and not from project affected people.
- Public and Private Acquisition of land needs to be considered on the same platform and it is proposed that acquisition done by the Government may not be given a separate/preferred status on the grounds of equity. In this context, the logic that consent of 80 per cent of the affected families is required only in the case of acquisition carried out for private companies seems, prima facie, unfair as the same principle does not seem to have been insisted upon for acquisition by the Government.
- Clause 3{za(ii) implies that two companies wanting to make an acquisition for the same project will have different conditions to fulfill solely on the basis of ownership(public or private).
- Definition of 'public purpose' should be based on the purpose for which land is acquired and not on the project ownership. Public purpose is neutral to ownership; therefore there is no justification for differentiation of processes based on ownership. Provision of consent of at least 80% project affected people for the private sector is discriminatory.
- There should be clearly defined process for obtaining the consent in the Act.

- The provision of 'public private partnership' and the partial acquisition in the 'public purpose' should be deleted.
- As per Clause 3 (za) 80% consent of people have been solicited. The words "project affected families" should be used for the purpose.
- Consent should be from Land owners and not landless, but R&R to be available to all affected families including landless.
- The percentage of consent may be kept 60% and not 80%. 80% consent is most difficult rather impossible to achieve by any private company.
- Affected people mentioned in section 3 should be changed to affected families.
- The term "project affected people" used in Section 3 sub-section za (vii) is vague and it should be defined properly and it should include "affected families" and "person interested".
- The requirement of consent of 80% of the project affected families is a quite difficult requirement and would be infeasible in most cases the Government may consider providing consent of 51% of the project affected families in the Bill which would be more practical.
- In Clause 3(za)(iv), the term 'planned development' has been included. 80 per cent consent is not required in these cases.
- Public Purpose has been vaguely defined. The Bill does not clarify how private and public purpose in a private project will be evaluated.
- The Provision of 'Public Private Partnership should be deleted.
- There should not be Government intervention in Public Private Partnership Projects. Provisions of 80% consent of affected persons should be for the Government acquisition also.
- The proviso regarding consent of at least 80 per cent of project affected people needs to be removed.

- If we say 80% consent is compulsory, everybody wants to be in that balance 20% component. It is because compensation is a multiplication. Therefore, nobody will be witting to be in the category of 80%.
- How that 80% consent going to be taken is not defined in the Bill. For getting the consent, referendum be conducted and the details of it be specified as per the norms.
- **PILSARC** in their note has observed as under:

“There are two categories of public purpose: (i) those where no benefits largely accrue to the general public, (ii) those where benefits largely accrue to the general public. In the latter case alone, 80% consent will apply. We fail to understand the distinction between the two categories (i) and (ii). We also fail to understand why the 80% rule should apply to category (ii).

It is proposed that (i) private acquisitions should be permitted where necessary (ii) Subjected to RR in all cases and (iii) with 100% consent from all affected on the basis of incentives or investments offered”.

It was further suggested :

“Private acquisitions 50-100 acres and 80% rules: we propose that rehabilitation and resettlement provisions should also apply to cases of private negotiated sale of less than 50 acres (urban) and 100 acres (rural), Also the 80% rule in its present form has several loopholes, which can be used by the private entrepreneurs to serve their own interest to the detriment of the affected communities. The said rule needs to be modified in order to ensure that consent of 80% of the project affected people should be obtained through and transparent process.”

4.42 **Response of the DoLR on the major issues raised above:**

- Responding of the suggestion of the **Government of Bihar** for making specific pre-conditions that Government should resort to land acquisition for private parties only when the private parties has procured land to that extent of 80%, the DoLR stated that the specific percentage has been left to the discretion of the State Governments and they can enact local amendments in furtherance of the same.

- On the **Government of Chhattisgarh** suggestion about deletion of Proviso to clause 3 (za) (vi) & (vii) that provides for obtaining 80% consent from project effected people because land is acquired for public purposes and Gram Sabhas are consulted before acquisition, the DOLR stated that while it may seem stringent it is vital to ensure that no forcible acquisition is carried out.
- On the **Government of Maharashtra** suggestion for cases where acquisition is for purpose, which is essential for development industries and urbanization then 80% consent should not be made necessary, the DoLR stated that to ensure transparent and participatory process in land acquisition, the provision of consent of 80% of the project affected families has been kept. DoLR did not accept the suggestion about reduction of 80% consent to 51%.
- On **the Ministry of Panchayati Raj's** suggestion about limiting PPP projects where the profits accrue to the Government coffers, the DOLR stated that the LARR Bill, 2011 will not only address the concerns of the project affected families but also facilitates land acquisition for industrialisation, infrastructure development, urbanization projects in a timely and transparent manner.
- Responding to the suggestion of the **Ministry of Panchayati Raj** for restrictive Government intervention to help private parties to acquire land where land use has been changed from agriculture to new use, the DoLR stated that the concern of the Ministry of Panchayati Raj has been taken care of in first proviso of Clause 3(za) in which consent of at least of 80% of project affected families shall be obtained through a prior informed process in case of acquisition for private companies.
- On the suggestion of the **Ministry of Power** about obtaining consent from 51% from project affected people instead of 80%, the DOLR stated that

reduction of consent of 80% to 51% is not agreeable as it will affect the larger informed consent, participatory process and transparency.

- With reference to suggestions of the **Ministry of Commerce** about (i) recognizing manufacturing sectors under “public purpose” (ii) apprehending that R&R provisions can cause impediments in industrial development (iii) need for clarity about urban sides similar legislature in other countries the DoLR replied:
 - (i) Clause 3(za)(vi) already provides for the land for projects where benefits largely accrue to the general public and PPP projects for the production of public goods or the provisions of public services.
 - (ii) To ensure transparent, participatory and informed process in land acquisition, the provision of consent of 80% of the project affected people has been kept in the Bill.
 - (iii) Both Government projects and PPP projects are covered under the definition of ‘public purpose’ in the Bill.
 - (iv) The LARR Bill, 2011 not only addresses the concerns of project affected families but also facilitates land acquisition for industrialization, infrastructure development and urbanization projects in a timely and transparent manner.
- With regard to suggestions that project affected people has not been defined in the Bill whose consent is sought, the DoLR stated that the 'project affected people' may be change to 'project affected family'.

4.43 The Secretary, **DoLR** during the course of evidence while referring to the issue of consent provision in LARR Bill stated:

“.....The next point is about consent of 80 per cent of the project affected families. There is a suggestion that it should be brought down to 51 per cent or some people are saying that it should not be consultation and that it should be consent. There are two things. The consent is of 80 per cent project affected families and consultation is with the Gram Sabha. So, these are two different things. When we are saying 80 per cent, people whose land is being acquired their consent is essential. This is for transparency. If we do not do it, then there will be a lot of heartfelt misgivings in peoples’ mind. Therefore, there is a slight difference, and we want to stick to the provisions that we have kept in the Bill now.”

4.44 The Committee also wanted to know whether 80% consent provision will be applicable to public facility like school or road or where land is to be acquired for giving to a private management, the Secretary, DoLR informed:

“Madam, Clause 3 (vi) (a) of the Bill states that the provision of land is in public interest for use by an appropriate Government for purposes other than those covered under sub-clauses (i) to (v). When we are defining public purposes, there are certain clauses which we have given. Except those five where the benefit largely accrues to the general public or public private partnership projects for the production of public goods or the provision of public services, the provision of land in the public interest for private companies...” If the Government is acquiring it land for airport is a Government acquisition no consent is required. If it is a Government project, no consent of the people is required. It is only when we are acquiring say for PPP model or if certain Government acquisition are not included in those five sub- Clauses and is for private companies, then 80% percent consent is essential. That is the legal position.

4.45 Explaining it further, the **Secretary DoLR** stated as under:

“Let me just explain it. If the Government is acquiring it – land for airport is a Government acquisition – no consent is required. If it is a Government project, no consent of the people is required. It is only when we are acquiring say for PPP model or if certain Government acquisitions are not included in those five sub-clauses and is for private companies, then 80 per cent consent is essential. That is the legal position.”

4.46 On the suggestion that 80 percent consent provision is too stiff and is very difficult to get, the DoLR stated that the condition of 80 percent families for acquisition of land has been kept to ensure transparent and participative process in the land acquisition.

RECOMMENDATION OF THE COMMITTEE

4.47 The Committee note that the 'public purpose' has been defined in Clause 3(za) of the Bill. The usage of 'public purpose' is the most important factor for implementation of the provisions of the proposed legislation. The relevant clauses which deal with this vital aspect are Clauses 2, 3(za), and 3(o). While Clause 2 of the Bill relates to application of the Act, Clause 3(o) defines infrastructure projects. However, these Clauses have not been interlinked

properly. On taking up the matter with the Department, DoLR has now stated that they will add 'public purpose' in Clause 2(1)(a). Similarly, they have now agreed that Clause 3(o), *i.e.*, infrastructure projects, will be added to the Clause 3(za). As recommended in Para 3.19 of the Report, the Committee disapprove the provisions which propose acquisition of land for private use or for private companies. They, therefore, recommend that sub-Clauses (vi)(B) and (vii) of the Clause 3(za) may be deleted and provisions of Clause 3(o) (i)-(iv) may be incorporated in 3(za).

Requiring Body
[Clause 3(zb)]

4.48 Clause 3(zb) provides as under:

"Requiring Body' means a company, a body corporate, an institution, or any other organisation for whom land is to be acquired by the appropriate Government, and includes the Appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land in public interest to a company, body corporate, an institution, or any other organisation, as the case may be, under lease, licence or through any other mode of transfer of land".

RECOMMENDATION OF THE COMMITTEE

4.49 Since the Committee have elsewhere recommended in the Report that the Government will not acquire land for PPP or private company, the following proviso may be added to the Clause:-

"Provided that requiring body may not include any public-private-partnership or private company"

**V. DETERMINATION OF SOCIAL IMPACT AND PUBLIC PURPOSE
(Clauses 4 to 9)**

5.1 The Clauses 4 to 9 of the Chapter-II of the Bill deals with the following:-

- (i) Preliminary Investigation for determination of Social Impact and Public Purpose.
- (ii) Appraisal of Social Impact Assessment report by Expert Group.
- (iii) Examination of proposals beyond 100 acres by a Committee, viz. Chief Secretary and exemption from SIA

These are discussed in subsequent paragraphs.

**Preliminary Investigation for determination of Social Impact and public purpose
(Clause 4 to 6)**

5.2 Clauses 4 to Clause (6) of this Bill provides as under:

“4(1) Whenever the appropriate Government intends to acquire land for a public purpose, it shall carry out a Social Impact Assessment study in consultation with the Gram Sabha at habitation level or equivalent body in urban areas, in the affected area in such manner and within such time as may be prescribed.

(2) The Social Impact Assessment study referred to in sub-section (1) shall, amongst other matters, include all the following, namely:—

- (a) assessment of nature of public interest involved;
- (b) estimation of affected families and the number of families among them likely to be displaced;
- (c) study of socio-economic impact upon the families residing in the adjoining area of the land acquired;
- (d) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- (e) whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project;
- (f) whether land acquisition at an alternate place has been considered and found not feasible;
- (g) study of social impact from the project, and the nature and cost of addressing them and their impact on the overall costs of the project and benefits *vis-à-vis* the social and environmental costs.

(3) While undertaking a Social Impact Assessment study under sub-section (1), the appropriate Government shall, amongst other things, take into consideration the impact that the project is likely to have on various components such as public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

(4) The appropriate Government may specify the ameliorative measures required to be undertaken for addressing the impact for a specific component referred to in sub-section (3), and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area.

(5) Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.

(6) (1) The appropriate Government shall ensure that the Social Impact Assessment study report is prepared and published in the affected area, in such manner as may be prescribed, and uploaded on a website created especially for this purpose.

(2) Wherever Environment Impact Assessment is carried out, a copy of the Social Impact Assessment report shall be made available to the Impact Assessment Agency authorized by the Central Government to carry out environmental impact assessment.”

5.3 Summary of suggestions placed before the Committee

- The Government of **Madhya Pradesh** suggested:

“The entire Chapter should be reduced into just one Clause which should provide: 'A Social Impact Assessment study shall in every land acquisition be carried out by the Appropriate Government in the manner as prescribed, by it under the Rules.

This idea of having a Collector sponsored SIA study, EIA, Expert Group, Examining Committee, Public Hearing (twice in the Act) etc. will make the entire exercise of LA a very languorous, lumpish and leisurely exercise. It should be left to the States to decide their own course of how to get SIA done. The hierarchy of decide their own course of how to get SIA done.

Having SIA conducted before the publication of the notification under Clause 11 will give a golden opportunity to people to do all sorts of mischief to artificially inflate the prices of the land under question. The Clause mentioned under sub-clause (4) of section-11 should precede SIA.”

- The Union Territory Administration of **Andaman & Nicobar Islands** in their written communication submitted:

“At every stage, starting from the publication of findings by the first Committee, the reports will become open to judicial scrutiny. When the community is highly litigant, every step is open to judicial scrutiny and the acquisition itself would be long delayed. Accordingly, there is a need to examine whether there can be simpler ways to address the concerns of the society particularly the pressure of displacement by ensuring that stress is overcome by schemes of the Government for benefit of the displaced persons”.

- The Government of **Assam** suggested quantifying the quantum of land to be acquired for undertaking the SIA study in Clause 4(1) of the Bill.
- The **Government of NCT of Delhi** gave the following suggestions:

In Clause 4, the Gram Sabha/ Gram Panchayat/ Municipal Corporation shall provide required assistance within 30 days of receipt of request from Administration. Instead of 'Gram Sabha', it should be 'Gram Panchayat' *i.e.*, the elected executive body of any Gram Sabha. 'Equivalent Body' needs to be clarified in as much as in the case like Delhi, whether it should be MCD, DDA or State Government as it should be local authority in terms of Clause 3(s).

- a. Clauses 4(2) and (3) are Overlapping

- b. Clause 4 (4) is too vague and general in as much as it does not specify about a scheme or program referred to in the Clause.
 - c. Clause 5: The Time, manner and the procedure and the authority required to give public hearing is missing needs clarification.
 - d. Clause 6: The manner of publication has not been prescribed as required in terms of Clause 3(y).
 - e. Clause 6 (2): What is “Impact Assessment Agency” needs to be defined.
- The **Government of Bihar** in the context of Chapter II of the Bill in a note stated:

“ The worth of such a study cannot be denied. We agree that the benefits accruing out of a given project must, in any case, outweigh costs and adverse impacts. But the issue here is not the aims and objects. The real issue is how to go about it? How and by whom that SIA Study is to be carried out? There could be inept handling at the very formulation stage. Who, after all, will be the social scientists and other experts who will be appraising the SIA report?”
 - The **Government of Maharashtra** suggested the following safeguards against indiscriminate acquisition and carrying out the SIA study:
 - “(i) For Government acquisition for public purpose Collector's certificate would suffice. The Social Impact Assessment should not be mandatory for the land acquisition for Government projects.
 - (ii) acquisition for private company for public purpose, it will be mandatory to have social Impact; however, where an Environmental assessment is mandatory, SIA and EIA should be combined.
 - (iii) Where no displacement of homes occurs, no SIA should be necessary only for acquisition for private company.
 - (iv) SIA should not be compulsory in projects which require small portion of land e.g. up-to 100 acres of land. It is also pertinent that when land is being acquired according to the master plan, then SIA should not be necessary, because public consultation is already done for land rate determination during preparation of master plan.”
 - The Ministry of **Urban Development** *inter alia* suggested the following:

- (a) that the mandatory requirement of Social Impact Assessment study should be applicable only when the area of private land to be acquired is more than 50 acres in urban areas and 100 acres in case of rural areas.
 - (b) the process of SIA should start only after the preliminary notification is issued under section 11 of the proposed Act.
- Further, The Secretary, **Ministry of Urban Development** during the course of evidence submitted:
 - (i) Purpose of SIA should be deciding for adequate R&R, but it should not be deciding factor to take a decision on the justification or need of the project itself.
 - (ii) SIA should also be linked to number of families displaced.
 - (iii) SIA should not be a pre-condition for initiating a project.
- During the course of evidence the former Secretary, DoLR (Smt. Rita Sinha) stated that SIA report should be prepared in consultation of Gram Sabha and Urban local body, in case of difference of opinion what's needs to be done should also be mentioned. It is also not very clear that whether the SIA has the power to overrule the opinion of Gram Sabha.
- **The National Commission on Scheduled Tribes (NCST)** in their written note stated:

"SIAs/EIAs are necessary to provide a good substrate for resettlement planning to address/mitigate ensuing problems and also to identify all the environmental displacement risks which tribal would be exposed to consequential to displacement; and establish the overriding public interest in Scheduled Areas (with record of specific findings on different issues to facilitate testing during judicial review), which demands such sacrifice from them. It is possible that the quantum of land proposed to be secured will be understated (or arranged in creeping increments) to escape R&R obligations. Therefore, in Scheduled Areas, SIA (including emotional and psychological impacts) should be mandatory for all projects/land transfers/change in land use of agricultural/forest land for a different purpose which will result in the displacement of tribal

owners/occupiers, irrespective of the quantum of land involved and the number of families it displaces or the voluntary/involuntary nature of the displacement. SIA should also identify affected areas (including contiguous forest lands wherein tribal have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections and subsequent determination of 'public purpose'.

They further stated:

"SIAs should be undertaken by the requiring body to avoid fragmentation dereliction of responsibility, through properly qualified multi-disciplinary teams and should also incorporate views of the affected persons and concerned elected local bodies in the Scheduled Areas".

- The **Ministry of Road Transport and Highways** suggested that since National Highway Projects involve linear acquisition of land in small stretch, there should be no requirement of SIA for highway projects as it involves minimum displacement.
- The **Ministry of Railways** sought for exemption from SIA stating that in case of Indian Railways land acquisition is generally in a linear nature with minimum displacement. They have suggested SIA exercise beyond 100 acres of land acquisition.
- The **Department of Atomic Energy** suggested that acquisition of land for a nuclear power plant is based on the site offered by State Government. So a provision should be made to exclude cases where State Governments offers the site to set up the facility. With regard to public hearing in Clause 5 of the Bill; they stated that strategic facilities including basic and applied research facilities, Uranium and Thorium Industry, Nuclear fuel reprocessing plants and nuclear power plants should be out of the preview of public hearing.
- The **Delhi Metro Rail Corporation** suggested SIA for the projects of 100/50 acres only.
- The Secretary, **Ministry of Power** during the evidence underlined the

need for simultaneous carrying out the SIA and Environmental Impact Assessment.

- Representatives of **Bhartiya Kisan Sangha** during the evidence suggested that final draft should be approved by Gram Sabhas. Merging of SIA with Environment clearance/ should be a mandatory pre-condition and not limited to a minimum of 100 acres.
- Representatives of **Shramika Kranti Sanghathan** during the course of evidence suggested that instead of SIA, Integrated Impact Assessment study be conducted.

5.4 **Other suggestions received were:**

- Acquisition should take place with the consent of the concerned Gram Sabha or Council.
- Need to examine the impact of acquisition and its effect on 'Zone of Influence' in tribal areas.
- Addition of the word "so as to reach all affected families" after "affected area" in clause 6.
- SIA and public hearing as envisaged in the LARR Bill may be merged with the environment clearance process and carried out in parallel with the land acquisition process.
- No provision has been made to review the evaluation of the expert group on SIA.
- There are no time lines in the Act for completion of the preliminary investigation, appraisal of the SIA report and examination of the proposal by the appropriate government.
- Social impact assessment study and environment impact assessment study should be a mandatory pre-condition and not limited to a minimum of 100 acres.
- No procedure is outlined in the event of majority objection at the public hearing under clause 5.
- Social Impact Assessment to be undertaken if the land acquisition involves displacement of one hundred or more families in plain areas or 25 or more families in tribal/ hilly areas.

- SIA should be carried out in a definite time frame and should be confined to fresh applications only.
- The Bill requires the SIA to be conducted for every acquisition in both rural and urban areas. This could pose impediments for small acquisition.
- SIA should be conducted in cases of land acquisition equal to more than 500 acres in rural areas and 300 acres in urban areas and where there are equal to or more than 500 displaced families.
- Unit for SIA should be 'family' instead of 'area'.
- The power plant expand in stages and therefore require provision for future expansions the “bare minimum extent” in Clause 4(2)(e) of the Bill needs to capture this.
- To minimize the time frame, SIA should be combined with public hearing for consent of people.
- Need for a time limit in the Bill for all the activities such as Public Hearing, Appraisal of SIA by expert group, exemptions, Committee constitution etc. Else will delay process of acquisition and a time gap between assessment and actual notifications will impact the price dynamics

5.5 **Response of the DoLR on the major issues:**

- On suggestion of the **Government of Madhya Pradesh** for making the entire SIA exercise short and purposeful with minimum bureaucratic hurdles, the DoLR stated as under:
 - (i) To make the provision regarding SIA more clear, the details provided in Clause 4 of the Bill are required to be retained.
 - (ii) To make the process of land acquisition more participative and transparent, the proposed provisions are required to be retained.
 - (iii) The SIA needs to be conducted before clause 11 notification. However, to prevent inflation of prices, the calculation of market value in clause 26, the time of preceding three years should be taken into account from the date of SIA notification.
 - (iv) Clause 4(4) of the Bill specifies the ameliorative measures required to be undertaken for addressing the impact mentioned in the SIA. So, this provision can be prescribed after SIA only.
- On the suggestion of the **Andaman & Nicobar Administration** about likelihood of spate of litigations arising out of publication of findings of SIA

and Expert Committee, the DoLR stated that various checks and balances have been provided in the Bill to ensure transparent and participative process in land acquisition. Further, mechanism for grievance redressal has also been kept in the Bill.

- On the suggestion of the **Government of Assam** about the need for specifying the quantum of land to be acquired in SIA, the DoLR stated that SIA is mandatory in all the cases of land acquisition. However, where the area to be acquired is smaller in size then the SIA can be discharged very rapidly and cannot be said to be inconvenience.
- On the observation of the **Government of NCT of Delhi** that the time frame and the manner in which the public hearing is to be carried out is missing the DoLR stated that It can be clarified in rules. The details in this regard may be given in the Rules to be framed under the Bill. The DoLR did not accept that the Clauses 4(2) and (3) are overlapping. Further, on the issue that the Impact Assessment Agency needs to be defined, the DoLR stated that Impact Assessment Agency relates to Environment Impact Assessment, which is defined in the Environmental Impact Assessment Notification, 1994.
- Responding to the **Government of Bihar** suggestions about uncertainty of execution of SIA exercise, the DOLR stated that details in this regard may be provided in the Rules to be framed under the Act.
- DoLR has not accepted the suggestions of the **Government of Maharashtra** about approval of public purpose by Collector and Divisional Level and no SIA where no homes are displaced. As regard suggestion for combining SIA with Environmental Assessment, DoLR stated that LARR already provides it. As regards necessity about SIA for small projects, DOLR stated:

"SIA is being done to assess the nature of public interest involved, study of socio-economic impact upon the families residing the adjoining area of land acquired, extent of lands, public and private, houses, settlements and other common properties likely to

be affected, study of social impact from the project and the nature and cost addressing them etc., so SIA is essential in all the projects involving land acquisition the smaller the project the less cumbersome will be."

- On the suggestion of the **Ministry of Urban Development** about applicability of SIA only for land acquisition, 100 acres in rural areas and 50 acres in urban areas, the DoLR stated that the Bill ensures a humane, participatory, informed process for land acquisition. Further, on the suggestion that the process of SIA should start only after the preliminary notification is issued under section 11 of the proposed Act, the DoLR stated that Preliminary notification should be published only after considering the likely impact of the project and hence not acceptable.
- On the suggestion of **National Commission on Scheduled Caste (NCST)** about identifying contiguous areas also in addition to 'affected areas' including forests land for the purpose of SIA, the DoLR stated:

"Forest land' is outside the purview of this Bill. Chapter II of the Bill already provides the detailed procedure for the SIA study. The concerns raised in the suggestion will be taken care of during the SIA study. Further, the SIA is proposed to be conducted in all cases of land acquisition irrespective of the quantum of land involved or the number of families that may be affected".

- On the suggestion of SIA to be conducted by the 'Requiring Body' the DoLR stated that it will be difficult to conduct a SIA study without the cooperation of the Appropriate Govt. So, the provision in Clause 4(1) of the Bill regarding SIA study to be conducted by the Appropriate Govt. should be retained as such.
- About the suggestion of associating PRIs in SIA, the DoLR has stated:

"Clause 4(1) of the Bill provides that the SIA will be conducted in the affected area in such manner and within such time as may be prescribed. So, the details of the SIA will be provided in the Rules to be framed by the appropriate Government under the Bill. The suggestions may be taken into consideration while framing these Rules."

- Replying to **DMRC's** suggestion for SIA for 100/50 rule only, the DoLR stated that SIA should be carried out in all cases of land acquisition as impact of the project needs to be studied comprehensively. For smaller projects the time required for conducting the SIA study will not be much.
- On the suggestion of the **Ministry of Road Transport and Highways** about exempting National Highway Projects from SIA, the DoLR stated that National Highway Act is outside LARR and as such LARR provisions are not applicable.
- On the suggestions of the **Ministry of Railways** about exemption of railway projects from SIA, the DoLR stated that SIA should be mandatory for such linear projects also.
- The DoLR has not accepted the suggestion of the **Department of Atomic Energy** for exempting SIA for nuclear facilities.
- On the suggestion about obtaining consent of Gram Sabha or Council and examining impact on 'Zone of Influence' of any land acquisition, DoLR stated that LARR is PESA compliant and ensures transparent and participative in land acquisition process.
- Regarding the time line for completion of the preliminary investigation, appraisal of the SIA report and examination of the proposal by the appropriate Government, the DoLR stated that such time lines can be prescribed in the rules to be framed for operationalisation of Chapter-II (Clause 4 to 7) to make land acquisition process time efficient.
- On the suggestion that to minimize the time frame, SIA should be combined with public hearing for consent of people, the DoLR stated conduct of SIA is subject to further rules to be prescribed

Appraisal of SIA by Expert Group
(Clause 7)

5.6 Clause 7 of the Bill provides as under:

“(1) The appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary expert group, as may be constituted by it.

(2) The expert group constituted under sub-section (1) shall include the following, namely:—

- (a) two non-official social scientists;
- (b) two experts on rehabilitation; and
- (c) a technical expert in the subject relating to the project.

(3) The appropriate Government may nominate a person from amongst the members of the Expert Group as the Chairperson of the Group.

(4) If the Expert Group constituted under sub-section (1), is of the opinion that,—

- (a) the project does not serve the stated public purpose; or
- (b) the project is not in the larger public interest; or
- (c) the costs and adverse impacts of the project outweigh the potential benefits, it shall make a recommendation to the effect that the project shall be abandoned forthwith and no further steps to acquire the land will be initiated in respect of the same:

Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision.

5.7 Summary of suggestions placed before the Committee

- During the evidence of the representatives of the **Sangharsh**, suggested that in the Expert Group for appraisal of SIA report, there should be a representative from local population.
- Representatives of the **All India Kishan Sabha** during the course of evidence before the Committee suggested that people's representatives from PRIs, Legislative Assemblies and Parliament be included in the Group.
- The **Government of Maharashtra** suggested that Expert Group on SIA should submit their report within a period of 2 months after Clause 9 notification.

- The **Government of NCT of Delhi and the Department of Atomic Energy** pointed out duplication between Clause 7 about Expert Group and Clause 8 about Chief Secretary Committee that may delay SIA.
- The **Ministry of Urban Development** pointed out that the Expert Group under Clause 4 is proposed to be empowered to exercise a veto for acquisition of the land in question. Further the Expert Group on appraisal of SAI can recommend alternative sites/alignments considering the aspect of social impact. It is felt that the Expert Group might not consider appropriate financial and economical rate of returns for recommending such relocation, as the majority of experts would be experts in their field but not for the particular project in question.
- Under Clause 7 (4) the Expert Group rejects a location for a project, there is no window available for the Government to reconsider the same location.
- The **Ministry of Urban Development** also suggested that SIA should start only after preliminary notification.
- During the evidence, the former Secretary, DoLR stated as under:

“The Chief Secretaries’ Committee is to be set up under clause 8. There is no sequence that first SIA report will be prepared and the Expert Group will examine it and then it will go to the Chief Secretaries’ Committee Report. Under clause 8, the Chief Secretaries’ Committee Report does de novo examinations. I think, if there are so many reports, there is likely to be conflicting opinions. I do not think that any committee is going to agree absolutely with the other. So, it is better if there is established a sequence where people just add on their opinions. At the end of the day, there is no mention that the Government will have to approve it. There has to be a final governmental approval. The Chief Secretaries’ Committee will not have the constitutional power to approve it in the sense that whichever Department is dealing with land acquisition, the Minister dealing with it is responsible as per the Constitution, but in this entire procedure, it is not mentioned that finally the Government has to approve it. When we come to notification under clause 16, it is written that the Government will base it on the report received by the Collector, which is there in the old Act. It has to mention also the SIA, the Expert Group’s opinion and the Chief Secretary Committee’s opinion. The Government cannot be totally independent of these. It is also mentioned that the

Chief Secretaries' Committee's Report's findings and the SIA findings will be placed in the public domain, but it is not mentioned so for the Expert Group. The Expert Group is the group which has the veto powers. If the Expert Group thinks that the SIA study is not covering public purpose and the area is too much, it can veto it. It is written that the Government will not take it up after the veto by the Expert Group. This veto must also come into public domain. When the SIA is being made, the Gram Sabha is consulted. If the Expert Group vetoes it, then it will not be placed in the public domain. So, people will wonder what happened to that report."

"Then, one more aspect is not clear. If once the Group vetoes this SIA finding, is it to be examined by the Chief Secretaries' Committee at all or not? Or, is the issue just over? At the end of the day, all the opinions should go to the Government and there should be a governmental final decision on it which is placed in the public domain. Then only the notification should be issued because the notification is being issued by the Government. So, a little more clarity is required on these issues."

- The **National Commission on Scheduled Caste (NCST)** has stated that the expert group to consider SIA report should also include a representative of the displaced families (only as observers). Individual notices may be issued in Scheduled Areas to all persons known to have an interest in the land besides public notice, so that they may also be enabled to seek judicial determination regarding the public purpose of acquisition.
- The **Ministry of Tribal Affairs** also endorsed the above views of NCST.

5.8 Other suggestions received were:

- Mandatory consultation by Expert Committee with all affected families in respect of proposals.
- Need for representation of Industry in Expert Group.
- Report of Expert Group should be placed before appropriate Government.
- There should be guidelines for Expert Group either in the Bill or in the rules so that there is some uniformity across different Expert Groups to see that who should do the final assessment

5.9 Response of DoLR on the major issues:

- On the suggestion of the **Government of Maharashtra** about submission of Expert Group's report within two months after issue of notification under clause 9, the DoLR stated that it may be considered. On the issue of associating the Gram Sabha or General Body of District Planning Committee in processing SIA report. The DoLR stated that Clause 7 of the Bill provides that the SIA report will be evaluated by an independent multi-disciplinary expert group. The SIA cannot be evaluated by the same persons who have prepared it. So, the provision of independent multi-disciplinary expert group as provided in the Bill is appropriate and should be retained as such.
- Observation of the **Government of NCT of Delhi and the Department of Atomic Energy's** about duplication between clauses 7 and 8 has not been accepted by the DoLR.
- On the suggestion of NCST about informing the affected families in the Scheduled Areas about SIA through a public notice, the DoLR stated that this SIA study will record the views of the affected families and it shall be published in the affected areas also. For objectivity, this SIA study needs to be evaluated by an independent multi-disciplinary expert group. So, the provision as given in Clause 7 of the Bill is proposed to be retained as such.
- The DoLR accepted the suggestion regarding framing of guidelines for Expert Group. On other suggestion about relaxation for power plants in Clause 7 of the Bill the DoLR stated that this can be taken care at the time of framing the rules.
- Other suggestions did not find favour with the DoLR.

Examination of proposals by the Chief Secretary Committee
(Clauses 8 and 9)

5.10 Clause 8 and 9 of the Bill provides as under

“(1) Where the land sought to be acquired is more than one hundred acres or more, the appropriate Government shall constitute a Committee to examine proposals for land acquisition consisting of the following, namely:—

(a) Chief Secretary of State or Union territory or an officer of equivalent rank nominated by the appropriate Government as *ex officio* Chairperson and (b) Secretaries of the Departments of—

(i) Finance (ii) Revenue (iii) Rural Development (iv) Social Justice (v) Tribal Welfare (vi) Panchayati Raj (vii) the concerned Departments (c) three non-official experts from the relevant fields as *ex officio* Members.

To examine proposals for land acquisition to be nominated by the appropriate Government as Members:

Provided that where the area sought to be acquired is less than one hundred acres the appropriate Government shall appoint a Committee to which it shall delegate the functions and responsibilities of the Committee referred to in sub-section (1).

(2) The Committee constituted under sub-section (1) shall ensure that—

(a) there is a legitimate and *bona fide* public purpose for the proposed acquisition which necessitates the acquisition of the land identified;

(b) the public purpose referred to in clause (a) shall on a balance of convenience and in the long term, be in the larger public interest so as to justify the social impact as determined by the Social Impact Assessment that has been carried out;

(c) only the minimum area of land required for the project is proposed to be acquired;

(d) the Collector of the district, where the acquisition of land is proposed, has explored the possibilities of—

(i) acquisition of waste, degraded or barren lands and found that acquiring such waste, degraded or barren lands is not feasible;

(ii) acquisition of the agricultural land, especially land under assured irrigation is only as a demonstrable last resort.

(3) The Committee referred to in sub-section (1) shall examine the report of the Collector and the report given by the Expert Committee on the Social

Impact Assessment and after considering all the reports, recommend such area for acquisition which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected.

- (4) The appropriate Government shall make available the decision of the Committee in the public domain and also display the same on its website:

Provided that where land is sought to be acquired for the purposes as specified in clause (b) or (c) of sub-section (1) of section 2, the Committee shall also ascertain as to whether the consent of at least eighty per cent. of the affected families as required under the proviso to sub-clause (vii) of clause (za) of section 3, has been obtained in the manner as may be prescribed.

9. Where land is proposed to be acquired invoking the urgency provisions under section 38, the appropriate Government may exempt undertaking of the Social Impact Assessment study.”

5.11 Summary of the suggestions placed before the Committee.

- The **Government of Madhya Pradesh** submitted that for a State like Madhya Pradesh it is not possible for the Chief Secretary to approve more than 1,000 SIAs every year. Instead of micro managing field work by central legislation, the Bill should lay down basic rules. Provisions such as composition of committees or approval authority, etc. should be left to the State Government.
- The **Government of Maharashtra** suggested that instead of having a committee under Chief Secretary to certify 3 types of public purposes, following decentralization is proposed:
 - For purpose 1 – public purpose can be certified by Collector.
 - For purpose 2 – public purpose can be certified by Divisional Commissioner.
 - For purpose 3 – public purpose can be certified by Chief Secretary/designated Additional Chief Secretary Committee.
- The **DMRC** has proposed as under:
 - “ Under Clause 8, Composition of Committee seems to be very large and holding of regular meetings including all members at frequent intervals may not be feasible. It is suggested that for area private land to be acquired is not more than 50 acres in case of Urban area and 100

acres in case of rural area, a smaller Committee comprising Chief Secretary, Secretary Revenue, Finance, representatives of requisitioning department and one expert may hold monthly meeting to clear the proposals received in previous months.”

- The **Ministry of Agriculture** suggested that Agriculture Production Commissioner/Secretary, Agriculture of the concerned State to be included as on Ex-Officio member in the Committee chaired by the Chief Secretary to examine/scrutinize proposals for land acquisition.
- The **Ministry of Mines** stated that Clause 8 of the LARR Bill provides for setting up of Committees at the State level for clearing the proposal for acquisition and also for obtaining a certificate from the District Collector concerned that there is no other degradable land available in the area and that the possibilities of acquisition of waste, degraded or barren lands have been considered and that acquiring waste, degraded or barren lands is not feasible. This kind of certificate may not of much relevance to the mining as the minerals are area specific, and unlike any other industry have to be undertaken where the minerals occur. Any allotment of mining lease is based primarily on the mineral potential of the area as determined through survey and exploration. Further, in the interest of industrial growth the LARR Bill should prescribe a time limit for obtaining clearances from the State Level Committees, otherwise delays may adversely affect the industrialization process.

5.12 Response of DoLR on the major issues

- On the suggestion of the **Government of Madhya Pradesh** about framing basic rules for LARR and leaving the issues of composition or appraisal of Authorities of States, the DoLR stated that only the projects which involve acquisition of more than 100 acres of land will go to the Committee headed by Chief Secretary or an officer of the equivalent rank. Such large projects need to be considered at the highest level in the State/UT.

- The DoLR has not accepted the suggestion of the **Government of Maharashtra** about decentralization of public purpose at three levels viz. Collector, Divisional commissioner, Chief Secretary in place of deciding those at the level of the Chief Secretary.
- As regards **DMRC's** suggestion of making a smaller Committee of Chief Secretary with Secretary Revenue and Finance and one Expert, the DoLR stated that Clause 8 already provides that where the land sought to be acquired is more than 100 acres or more, Committee under Chief Secretary will look into such cases.
- On the suggestion of the **Ministry of Agriculture** for inclusion of Agriculture Secretary of the concerned State in Chief Secretary Committee, DoLR stated that Clause 8 (4) (vii) of the LARR Bill 2011 already provides Secretaries of the concerned Departments in the Committee as may be specified by the appropriate Government. The appropriate Government may nominate Secretary, Agriculture to this Committee, if it finds appropriate.
- On the suggestion of the **Ministry of Mines** of providing a minimum time limit for obtaining clearances from State Level Committee i.e. Chief Secretary Committee in the interest of industrial growth, DoLR stated that though a separate time limit for obtaining clearances from the State Committees has not been provided, the Bill prescribes for completion of acquisition process within a period of three years from the publication of preliminary notification.
- On being asked by the Committee that whether the number of Committee be restricted to two i.e. by merging SIA and Expert Group, the DoLR stated that the SIA study will be conducted by the appropriate Government. It will be examined by an independent multi-disciplinary expert group. So the mandate of the SIA Study and Expert-Group is different.

- In reply to a specific query, the DoLR stated that the SIA study should be done for every project irrespective of the number of families displaced. This is necessary to know the impact of the project and the ameliorative measures needed to mitigate the effect of the project. The SIA study for smaller projects will take less time.

RECOMMENDATIONS OF THE COMMITTEE

5.13 Clauses 4 to 9 of the Bill deal with the Preliminary Investigation for determination of Social Impact and Public Purpose. While doing SIA the factors to be examined are nature of public interest, estimation of affected families, study of socio-economic impact upon the families residing in the adjoining area of the land to be acquired, extent of land, public and private houses, settlements, etc. to be affected, minimum need of land for the project and whether land acquisition at an alternate place has been considered and found not feasible. The Committee are of the view that while the proposed SIA will ensure that only the minimum amount of land required for a project will be acquired, the Committee also recommend the inclusion of "Zones of Influence" within the ambit of the Social Impact Assessment study, when acquisition is proposed in Fifth Schedule areas, so as to determine whether any change in livelihoods, social practices and environmental conditions may arise through the setting up of industry, mines, roads etc. in a manner that may prove to be detrimental to the people living in the area contiguous to the site of the proposed acquisition.

5.14 In Clause 4(1) it has been provided that whenever the appropriate Government intends to acquire land for a public purpose, it shall carry out a Social Impact Assessment study in consultation with the Gram Sabha at habitation level or equivalent body in urban areas in the affected area in such manner and within such time as may be prescribed. The Committee find that Clause has not specified whether the consent of Gram Sabha should be necessary and in case Gram Sabha does not give its consent how the matter will proceed further. Accordingly, the Committee recommend that Clause 4 may be

amended to indicate that SIA will be completed with the consent of Gram Sabha or equivalent body.

5.15 In Clause 5, for the word 'hearing', the word 'hearings' may be substituted.

5.16 The following proviso may be added to Clause 6 (1):

"Provided that the Social Impact Study Report shall be made available to Gram Sabha (or equivalent body in municipal areas) in the language/dialect of the affected areas, along with a summary in simple language for information of affected persons and the local community."

5.17 The following proviso may be added to Clause 6 (2) of the Bill:

"Provided that the Environment Impact Assessment shall be carried out in consultation with the Gram Sabha (s) concerned and that such Assessment shall be made available to the members of the Gram Sabha in the language or dialect of the affected area along with a summary thereof in simple language."

5.18 The Clauses dealing with SIA do not spell out the proposed composition of the SIA Teams/Body/Group which would undertake SIA. The Committee recommend that Social Impact Assessment teams should include the Presidents or the nominees of Panchayats at all levels involved in the acquisition. These representatives must act in accordance with written mandates given to them by respective Gram Sabhas concerned. The Committee is of the opinion that this is the only way in which SIAs will be people-centric, people-driven and genuinely, consultative.

5.19 Clause 7(2) provides constitution of Expert Group comprising of two non-official social scientists, two experts on rehabilitation; and a technical expert in the subject relating to the project. The Committee recommend that in addition to the proposed members one or more person may be nominated from the affected Gram Sabha/Zila Panchayats at the appropriate level or the municipalities as the case may be.

5.20 The following may be provided in place of existing Proviso to Clause 8 (4):

"Provided that the decision of the Expert Committee shall be made available to Gram Sabhas (or equivalent body in municipal areas) in the language/ dialect of the affected areas, along with a summary in simple language for the information and consideration of the affected persons and the local community."

5.21 To provide natural justice in the matter of land acquisition in urgency provisions, after Clause 9, the following proviso may be added:

"Provided that no such land shall be acquired by invoking such provision unless the appropriate Government has issued notice and called for objections upon such notice and such objections have been heard and disposed off."

5.22 Besides, there are suggestions like the issues of whether the Preliminary notice under Clause 11 should be issued prior to SIA or after. While the DoLR has mentioned that the proposed provisions are appropriate, the Committee would like the Government to consider this alongwith other suggestions on the subject.

VI. NOTIFICATION AND ACQUISITION (Clauses 11 to 25)

6.1 The Chapter IV of the Bill provides for the Notification and Acquisition, Clauses in this Chapter *inter-alia* include Publication of preliminary notification, Preliminary survey of land, Payment for damage, Lapse of Social Impact Assessment Report, Hearing of objections, Publication of declaration, Notice to persons interested, Rescission of Preliminary Notification, etc.

6.2 Summary of suggestions placed before the Committee

- The **Government of NCT of Delhi** has suggested to replace “the said area” with “the said locality” in Clause 11(1) (e) of the Bill and to replace “Gram Sabha” with “the Gram Panchayat” in Clause 11 (4) in line with section 4 of the Delhi Land (Restriction on Transfer) Act, 1972.
- The **Government of Madhya Pradesh** stated that Clause 11(2) of the Bill seeking consultation with Gram Sabha and Autonomous Council in Sixth Schedule Areas in all land acquisition cases is unnecessary. While referring to Clause 11 (4) that seeks to ban all land transaction after the preliminary notification is issued, they suggested that it should precede SIA process so as to restrain mischief-mongers from artificially ballooning prices of the appointed land.
- The **Department of Atomic Energy** while referring to Clause 11(4) suggested removing First Proviso regarding permission by the Collector in special circumstances for transaction of land.
- The **Ministry of Power** suggested the following:

"The Preliminary Land Acquisition Notification and SIA process could be done simultaneously to avoid misuse of transfer of rights in land to many people during SIA study and also to avoid litigation. Section 17 Notification will be issued only after SIA is finalized.

Time requirement for land acquisition:

As per the provision of this act the maximum time allotted for acquisition of land is more than 3 years i.e. 1 year between Section-11 and Section-19 and 2 years between Section-19 and award. It may be noted that this period is on the higher side

because this will not include pre notification assessment and public purpose approval by Chief Secretary. Moreover, in the proposed amendment in 2007 bill the entire process of acquisition was to be completed within 1 year time. It is therefore submitted that time requirement from Section-19 to award may please be reduced to 1 year instead of 2 years.

Clause 14 on lapsing of SIA report:- Six months may be increased to minimum one year because project developers are dependent on State Governments for issue of notifications. Many times, due to various procedural delays, notification may get delayed. Besides, CPSUs take considerable time for internal process in order to comply with Govt. rules and regulations."

- The **Ministry of Railways** suggested that process of land acquisition through consent award may be simplified. Issue of subsequent notifications under LARR-2011 may be done away with after agreement of consent award is formalized between the collector and the landowners.

- The **Ministry of Panchayati Raj** suggested the following:-

"sub Clause (2) of the Clause 11 may be amended to read "No notification shall be issued under sub section (1) unless the concerned Gram Sabhas at the village level and municipalities in case of urban areas have been consulted and in the case of Schedule V and Schedule VI areas the concerned Gram Sabhas and the autonomous Councils respectively have given consent, in all cases of land acquisition in such areas as per the provisions of all relevant laws for the time being in force".

- The **Ministry of Urban Development** suggested as under:

"It is suggested that the process of SIA should start only after the preliminary notification is issued under clause 11 of the proposed Act. It also needs to be provided that if land acquisition proceedings are held up on account of the stay or injunction by order of any court, for all clauses of LARR Bill which lay down that a particular action should be taken by a given time failing which the acquisition proceedings would lapse and should be started de novo, a proviso that any delay on account of court orders should be excluded for the purpose of counting the period by which action should be taken under respective clauses should be added, in order to avoid lapsing of the acquisition proceedings. Such explanations would be necessary at least for clause 14 & 15, 24 (1) & (2), 25 and 95."

- The **Government of Uttar Pradesh** has suggested that under Clause 15 time line of one year is to be clarified whether it should be from the publication of preliminary notification in Gazette or in newspaper or from the date of notice.
- The **Government of NCT of Delhi** suggested the following:

"Clause 19 (2): Third proviso should also be added to the effect that no declaration shall be made beyond a period of 12 months from the date of preliminary notification issued under Section 11.

An explanation in the following terms should also be added to the Third Proviso:-

Provided further that no such declaration shall be made in respect of any particular land covered by a notification under Section 11(1) after the expiry of one year from the last date of publication of the notification.

Explanation: (1): In computing any of the periods referred to in the said proviso, the period during which any action or proceedings to be taken in pursuance of the notification issued under Section 11(1) is stayed due to an order passed by a Court, shall be excluded."

- The **Government of NCT of Delhi** also suggested in regard to Clause 25 that the word 'last' should be added before the date of publication in as much as, as per Clause 19, various modes of publication are mentioned which are mandatory in nature. Thus, limitation has to start from the 'last date of such publication'.
- The **Ministry of Coal** suggested exclusion of time lost in court proceedings shall be excluded under Clause 25 that provides that if no acquisition is made within two years from the date of declaration under Clause 19.
- The **Ministry of Railways** in relation to Clause 25 that provides for two years time from publication declaration under Clause 19 making an award suggested that period of two years is too long. LARR provides for max 1 year between SIA & Notification under Clause 11 (1); another 1 year from notification under Clauses 11(1) and 19(1). Provision of additional 2 years between notifications under Clauses 19 and 25 shall delay the payment of amount of compensation and land cost in the interim period may rise exponentially giving rise to litigations and delays. This period of two years may be reduced to one year.

6.3 Other suggestions received were:

- Former Secretary, DoLR during the course of evidence stated that the timeline for the publication of the declaration will prove to be very short.
- During the course of evidence, representatives of the **Government of Uttar Pradesh** stated that for counting one year between the declaration and finalization of Public Purpose, last date of notification should be the relevant date.
- Director, **PILSARC** in his memorandum submitted:

"The following Clause 11 (A) to be added.

Notwithstanding anything contained in this Act or any other law for the time being in force, no acquisition shall take place in any area under the Vth Schedule without the consent of the Gram Sabha or Gram Sabhas concerned; or under the VIth Schedule without the consent of the Council or Councils concerned.

It is submitted that preliminary processes i.e. (a) Social Assessment Report [Clause 11(3)], (b) The RR Report [Clause 11(3)] and (c) The preliminary survey (Clause 12, 20) are germane to objections and should be fully placed.

Pre-preliminary consultation with Gram Sabha under Clause 11(2) is recommended by suitably modifying this Clause.

Preliminary survey of land under Clauses 12 and 13 is recommended. Firstly, the set survey should be done prior to issuing preliminary notification under Clause 11(1). Secondly, this exercise should be conducted in the presence of the concerned Gram Sabha, Council or Municipality.

The Clauses 12 and 13 be made to operate prior to the preliminary notification as follows:

"Clause 12: Prior to the Preliminary notification under Clause 11(1), the Government shall indicate the land sought to be acquired with markers to enable the Gram Sabhas and councils as the case may be and any person interested may know the extent of land proposed for acquisition.

Provided further this exercise shall be conducted in the presence of the Gram Sabha, council or municipality.

Provided further that where any exploration is required it must be with the consent of the person interested.

The present Clauses 12 and 13 be deleted."

- **All India Kisan Sabha** suggested the preliminary notification under Clause 19 should be published in all the daily newspapers in the locality including the Dailies in the regional language in place of two daily newspapers.
- Clause 37: Obligation of the Collector to make payment of land compensation within 3 months and monetary part of R&R benefits within 6 months should be extended.
- Clause 32: References from the collectors should go to a Tribunal under the District Judge.

6.4 Response of DoLR on the major issues

- On the suggestions of the **Government of NCT of Delhi** regarding replacing “the said area” with “said locality” in Clause 11(1), the DoLR stated that no discernible prejudice demonstrated by use of existing term and hence not acceptable. The suggestion about replacing “Gram Sabha” with “Gram Panchayat” in clause 11 (2) and redrafting Cl. 11 (4) in line with Delhi Land (Restriction on Transfer) Act, 1972, have not been accepted by DoLR.
- On suggestion of the **Government of Madhya Pradesh** regarding application of Clause 11 (4) of the Bill that seeks to ban all kind of land transaction of the appropriate land before SIA is conducted so as to restrain mischief-mongers from artificially ballooning prices of land, the DoLR stated that SIA needs to be conducted before notification under Clause 11. However, to contain artificial inflation of prices, the calculation of market value in Clause 26, the time of period of preceding three years should be taken into account from the date of SIA notification.
- The DoLR has not accepted the suggestion of the **Department of Atomic Energy** for removal of First Proviso to Clause 11 regarding permission of Collector in special circumstances for transaction of land.

- On the suggestion of the **Ministry of Power** for simultaneously doing SIA with preliminary notification to avoid transfer of rights in land to many people and also to avoid litigation, the DoLR stated that period of two years for making an award from the date of publication of declaration under Clause 19 is maximum period allowable. It is expected that this limit will not be reached in majority of cases.
- On the suggestion of the **Ministry of Railways** for incorporating consent award prior to Declaration award in LARR Bill on the pattern of some States like U.P. for faster land acquisition, the DoLR stated that already there is a provision for seeking consent of the people before the acquisition proceedings start. This consent is not only for willingness to part away with the land, it also implies that they are willing to accept the award as per the provisions of the Bill.
- On various points raised by the **Ministry of Panchayati Raj** like obtaining consent instead of consultation with Gram Sabha for any acquisition, revoking of all previous acquisition in PESA areas, etc., the DoLR stated that the LARR is PESA compliant and it already provides for consultation with Gram Sabhas and details of consultation may be provided in the Rules to be framed under the Act.
- On the issue of exclusion of period lost in court proceeding, the DoLR has stated that it is agreeable.
- On the suggestion of the **Government of Uttar Pradesh** for clarification under Clause 15 about calculation of one year time whether it should be from publication of preliminary notification in Gazette, or in newspaper or from the date of notice, the DoLR stated that details in this regard may be provided in the Rules.
- The DoLR has agreed to the suggestion of the **Ministry of Urban Development** that any delay on account of court orders should be excluded for the purpose of counting the period by which action should be

taken under respective clauses should be added, in order to avoid lapsing of the acquisition proceedings.

- Regarding the suggestions of the **Government of NCT of Delhi** for inserting a third Proviso to Clause 19(2) saying that no declaration shall be made beyond a period of 12 months from the date of notification under Clause 11 and insertion of an explanation excluding the time lost in Court proceedings in land acquisition, the DoLR agreed to it and stated that adding Clause 15 relating to rescinding of preliminary notification as a proviso to Clause 19 will serve the purpose.
- On the **NCT of Delhi Government's** suggestion in Clause 25 for adding the word 'last' before the date of publication, the DoLR stated that on the ground inasmuch as per Clause 19, various modes of publication are mentioned which are mandatory in nature. Thus limitation has to start from the 'last date of such publication.'
- The suggestion of the **Ministry of Coal** for exclusion of time lost in Court proceedings has been agreeable to DoLR.
- On the other suggestions, the DoLR stated:
 - (i) On publication of SIA Report alongwith Expert Committee Report and Collector Report and consultation of Expert Committee with affected families obtaining objections from Expert Committee Report etc. the DoLR stated that Clause 11(3) already provides the publication of statement on the natures of public purpose involved, reasons necessitating the Displacement of affected persons, summary of SIA and particulars of Administrator appointed. Further Clause 42 has specific provisions for extending R&R benefits to private purchases beyond a limit.
 - (ii) On suggestions like placing before public SIA Report, R&R Report and preliminary Survey prior to receiving objections and giving R&R package before obtaining objections, the DoLR stated:

"The Bill ensures transparent and participative process in land acquisition. SIA study is conducted to determine the viability of the project along with the site selection. The land acquisition process kicks in once the Government accept the SIA. The R&R package can only be prepared after Section 11 notification. There is already a provision in Clause 11(3) of the Bill which provides reason necessitating the acquisition of the land.

The Bill has got adequate provisions for consultation during the SIA, preliminary survey and R&R report.

Clause 17 of the Bill already provides for public hearing for the draft R&R scheme."

About suggestion of **All India Kisan Sabha** for publishing notification under Clause 11 in all newspapers in the locality including in newspapers in Regional languages, the DOLR stated that the Bill ensures transparent and participative process in land acquisition.

The other suggestions of about vesting the power of Collector under Clause 11 (4) in President District Panchayat and extending the short time line of one year in Clause 15 for works like consultation with local bodies, updation of land records, base line survey etc. have not been accepted by DOLR.

RECOMMENDATIONS OF THE COMMITTEE

6.5 The following Proviso may be added to Clause 11 (1):

"Provided that the Collector ensures that Gram Sabhas constituted under Article 243A are convened in every village panchayat affected by the preliminary notification and a copy of the preliminary notification in the language of affected village, along with an explanatory note in simple language, is circulated well in advance, followed by an oral briefing in the Gram Sabha in the language/dialect of the villagers."

6.6 Clause 11(2) of the Bill provide that no notification shall be issued under sub-section(1) unless the concerned Gram Sabha at the village level and municipalities, in case of municipal areas and the Autonomous Councils in case of the Sixth Schedule areas have been consulted in all cases of land acquisition.

The Committee recommend that the words 'have been consulted' may be replaced by the words 'have given consent' so that the approval of the Gram Sabha or equivalent urban body become mandatory.

6.7 On taking up the matter with the Government DoLR has agreed for the following:

- (i) DoLR has agreed to the suggestion of the Ministry of Urban Development that any delay on account of court orders should be excluded for the purpose of counting the period by which action should be taken under respective clauses should be added in order to avoid lapsing of the acquisition proceedings.
- (ii) DoLR has also agreed for exclusion of period lost in court proceeding.
- (iii) DoLR has agreed for inserting a third Proviso to Clause 19(2) saying that no declaration shall be made beyond a period of 12 months from the date of notification under Clause 11 and insertion of an explanation excluding the time lost in Court proceedings in land acquisition.

The Committee accordingly recommend that suggestions/amendments agreed to by DoLR may be incorporated in the relevant Clauses of the Bill.

6.8 In Clause 12, after the words 'for his servants and workmen', the words 'in association of local representatives' may be added.

6.9 After the Clause 17 (1)(d), the following may be added:

"(e) Details of any Common Property Resources being acquired."

6.10 In Clause 17 (5) the words 'A public hearing' may be substituted by the words 'Public hearings'.

6.11 In Clause 17 (6), the word 'hearing' may be substituted by the word 'hearings'.

VII. DETERMINATION OF MARKET VALUE AND THE AMOUNT OF COMPENSATION

[Clauses 26 to 29 and the First Schedule]

7.1 Clauses 26-29 and the First Schedule deal with the minimum compensation package in terms of monetary benefits to be given to the landowner. Clause 26 of the Bill provides for the criteria in assessing and determining the market value of land by Collector; Clause 27 seeks to provide determination of amount of compensation by the Collector after having determined the market value of the land; Clause 28 provides for determination of value of things attached to the land and the Clause 29 seeks to provide award of solatium by the collector after having determined the total compensation to be paid to arrive at the final award. The First Schedule to the Bill spells out the components that shall constitute minimum compensation package.

7.2 Summary of the suggestions placed before the Committee:

- Submitting their views on the multiplying factor which is two for rural areas after having determined the market value the **Government of Madhya Pradesh** submitted in a note:-

“It is not clear as to why value of land is multiplied by a factor of two in rural areas. If 100% solatium is added, value of land will go up to four times in rural areas which will enhance the land acquisition cost of government projects enormously. It is, therefore, suggested that Govt. of India may provide budgetary support for acquiring the land for development projects of government in future.

Government of India should also revise the 'project cost' of the development projects. The costs of developmental projects are likely to witness an exponential increase. In present shape the law proposed appears to be quite hostile to the development aspirations of the states suffering from resource-crunch.”

- The **Government of Uttar Pradesh** in their written submission to the Committee suggested that in Clause 26 of the LARR Bill, 2011, there should be provision of ‘compulsory offer’ of the shares equivalent to 25% of the compensation amount by the requiring body. Keeping the alternative of offer by the requiring body will not be appropriate, as the land owner will have the alternative of accepting or not accepting the offer.

- The **Government of National Capital Territory of Delhi** in their written submission stated as that in Clause 26 (1) (a): Rates may also be notified by the Government after due deliberation involving representatives of farmers/landowners for determining compensation in land acquisition award which may contain the following inter-alia in addition to factors contained in Clause 63:
 - (i) Base rate.
 - (ii) In built mechanism for time bound enhancement.
 - (iii) Area specific rates depending upon location, accessibility, arability, land use after acquisition etc.
 - (iv) Master Plan on the subject land.
- The **Government of National Capital Territory of Delhi** also informed the Committee that in Delhi, the rates are fixed by a consultative process. Recently, the Government has also notified circle rate as one of the factors to be considered for land acquisition by the Land Acquisition Collectors.
- Further, the **Government of National Capital Territory of Delhi** submitted that In order to make the Clauses 27, 28 and 29 more explicit and clear, it would be advisable to bring Clause 63 and be added after 25 and then the provisions contained in Clauses 27, 28 and 29 should be made part of Explanation or illustration to such Clauses.
- The **Government of Chhattisgarh** in their note stated that as per First Schedule of the proposed Bill, it is mentioned that in rural areas the overall compensation will be two times of the original market value and the this amount should be the same as that of the market value in urban areas. This distinction gets blurred in villages which are close to urban areas. Also, in recent years Registration departments have tried to come as close as possible to market values while determining what are called 'guideline rates'. By arbitrarily raising the rates for acquisition to 4 times in rural areas (which includes solatium), we should not create distortions in actual market rates.

- The **Union Territory of Andaman and Nicobar Islands** in their note stated that it needs to be clarified that whether it would be paid to someone who has illegally occupying the land too?
- The **Ministry of Coal** in their submission informed the Committee about their present system of fixation of Market Rates for the acquired land which is as under:

“The CBA (A&D) Act provides for assessment of compensation on the basis of the market value on the date of notification under section 4(1) of the said Act and it is determined by taking into account the average of last three year's registered sale deeds in the locality and also the ready reckoner rate for the year of notification under Section 4(1) of the said Act, prescribed by the State Government. In addition to the market value so determined, solatium at the rate of 30% of the market value, escalation at the rate of 12% per annum from the date of notification under section 4(1) to the date of notification under section 9(1) of the said Act or for a period of 36 months, whichever is less, interest for delayed payment from the date of notification under section 9(1) of the said Act at the rate of 9% per annum for the first year and 15% per annum for the subsequent years are also being paid to the land losers.”

- The **Ministry of Coal** also suggested to reduce the solatium from the proposed 100 per cent to 60 per cent.
- The **Department of Atomic Energy** in their written submission stated that factor by which the market value to be multiplied in the case of rural areas should be 1.5 and the amount of solatium to be 50 per cent.
- The **Ministry of Railways** suggested to insert a sub-clause '(c)' between Clause 26(b) and “whichever is higher” as below:

“Or

(c) In case the State Govt. through any Act or Gazette notification or as approved by any authority of State Governments as per their approved procedure has fixed a higher rate of compensation of land, the same may be considered as market value of land while calculating the compensation for acquired land.”

They also stated that as the market value of land may rise

exponentially and denying the land owners their reasonable value of land may invite not only unwarranted criticism but also delay due to litigations, the market value of land adopted should be as prevalent as on date of publication of Award under Clause 25 of the Bill.

- The **Delhi Metro Rail Corporation** in their submission stated that the amount of compensation determined by Collectors under the provisions of the existing Act may not be adequate in enabling land owners to buy similar properties in similar locations. This is mainly because the registered sale deeds of the properties do not show their true sale value. This aspect can be addressed through a mechanism of fixing the minimum floor prices reflecting the rate at which properties can actually be purchased by the affected land owners in similar localities. They were also of the view that the proposed Land Acquisition and Rehabilitation & Resettlement Bill, 2011, address the issue of low compensation by increasing the solatium from 30% (in the existing Act) to 100% in the proposed Act.
- The **Ministry of Housing and Urban Poverty Alleviation** stated that the Bill has proposed different treatment to compensation calculation for rural and urban areas due to different multiplication factors mentioned at Clause 26(2) read with Schedule I. The basis of different treatment is unexplained. Urban areas may be given similar as that of rural area for bringing comparability in compensation.
- The **Ministry of Panchayati Raj** in their written note stated:

“Clause 26 of the Bill authorizes the District Collector to determine the "market value" of the land as described therein. This Ministry are of the view that value referred to in Clause 26 (1) (a) is not the market value, but what is known in common parlance as the "circle rate". The 'circle rate' can by no means be called the market rate. As for 26 (b), the concerns are first, that agriculture land sales for agricultural use are few and far between, and generally under conditions of distress or duress, so that the sale price is an

uncertain indicator of the market value; and secondly, that the market price is always close to the circle rate in order to avoid registration fees on the real transaction cost. That this is accepted is clear from the formula for compensation in section 26(2) that provides for a multiplication factor and also a solatium. The Ministry feels that this will leave no one satisfied, as the rationale for the multiplication factor is also missing. The original land holder may still suspect he is being given less than market value, and take the matter to the courts, while the requiring body may be unhappy at the outgo adding to the cost of the project. It would also put the District Collector under great strain of justification of this compensation to both parties and the courts as the market price. Therefore, this issue has to be addressed.”

They further added that in Clause 26 of the Bill 'market value' has been used in two senses i.e. the initial estimated market value and the revised market value that is three times the initial value. Different terms may be used for the two market values.

- Comparing the provision of fixing the 'market value' with the existing provision the **Ministry of Power** in a written note submitted:

“The provisions of market value determination have been given in Section 23 and Section 24 of existing LA Act. Market value of land is being decided by the concerned Revenue authority of the State, based on circle rates notified by revenue authorities for sale and purchase purpose. However, presently land is also being acquired through consent route as per section 11 (2) of LA. Act.

The existing provision of consent route under section 11 (2) of LA Act should be incorporated in LARR Bill - 2011 also as this provision would help in minimizing disputes and land acquisition for the projects would be faster.”

- On the issue of stamp duty, the **Ministry of Finance** in a written note stated:

“The subject stamp duty, other than that of rate of stamp duty, falls in the Concurrent List of the Seventh Schedule of the Constitution, Some States like Rajasthan, Maharashtra etc. have accordingly brought in their own legislations related to stamp duty, while some have adopted Indian Stamp Act 1899 with some modifications. These legislations usually refer to 'market value' and not any minimum value on the basis of which stamp duty to be charged is determined. For the purpose of determining stamp duty, 'market value' of land is separately notified by the State authorities from time to time.”

- The representatives of the **Ministry of Road Transport & Highways** in their evidence before the Committee stated that it follows the policy of various State Governments for acquiring land. Land Revenue Officer of the State Government is appointed as the Competent Authority and whatever compensation amount or R&R are awarded, the Ministry accepts that. The National Highways Act gives full freedom to fix the Market value of Land.
- The representatives of **Sangharsh** in their evidence before the Committee suggested for including the minerals beneath the land for determination of value of things attached to the land in the Clause 28 of the Bill. They were also of the view that compensation should be in accordance with the intended use of the land and should be 10 times of the market value of the land.
- The representatives of the **Confederation of Real Estate Developers Association of India (CREDAI)** deposing before the Committee submitted that the Government has totally lost the sight of the middle-class citizens of the Country who are in dire need of good and affordable housing. Increase in the compensation packages will have a direct bearing on the final cost to the ultimate customer. They also questioned the basis of giving 100 per cent solatium on the market value. They further suggested that the original land owner whose land is being acquired for a project which is commercial in nature should become a shareholder in that project.
- **Shramik Kranti Sangathan** in their evidence before the Committee submitted that the market value of the land should be linked with ready reckoner.
- On the issue of offer of share **Bhartiya Kisan Sangha** in their evidence stated that it can be misused as everybody is not expert in equity market.

On the issue of determination of value of things attached to land in Clause 28(2), they suggested that instead of “experienced person” it should be “an economics graduate or agriculture graduate”.

- The representatives of the **All India Kisan Sabha** in their evidence before the Committee suggested that a Land Price Commission should be set up at the National Level, State Level and District Level to determine the value of the land. The representatives of the Bhartiya Kisan Union were also of the view of setting up of District Level Committee.
- The representatives of **Kisan Morcha** suggested that the multiplying factor should be 6 for determining the amount of compensation.
- The representatives of the **Akhil Bhartiya Vanvasi Kalyan Ashram** in their evidence before the Committee stated that in tribal areas land can be transferred only to tribals and there is very little transaction of land so, market value in that area would be very less. So, in case of tribal area the multiplying factor for determining the market value should be 10.
- The representatives of the **Government of Chhattisgarh** in their evidence stated that at some point we have to give authority to the Collector in determining the market value of the land.
- The representatives of the **Tirthkshetra Vikas Avum Paryatankshetriya Lokhit Parishad** in their submission before the Committee submitted that “approved places of tourism” be added in the First Schedule and Tirthkshetra should be treated at par with the rural areas as far as compensation and solatium are concerned. They also suggested for deleting entry 5 of First Schedule dealing with solatium as it is repetitive.
- **Adivasi Adhikar Manch**, in their evidence before the Committee suggested that the multiplying factor for determining the market value

should be 6 and instead of average price, highest exemplar should be taken into account to determine the market value. They also suggested involving land losers in determining the market value of the land.

- The representatives of **Federation of Indian Chambers of Commerce and Industry (FICCI)** in their evidence before the Committee submitted that at whatever value the registration has been done can be treated as market value. That would bring equity, both from industry's perspective and from landlord's perspective. They also raised the issue of cascading effect on the market value of land and stated that when an industry pays an amount, for the second industry that becomes the market price so second industry which start as market value of 4X, it will come to 16x according to the First Schedule of the Bill.

7.3 Other suggestions received were:

- The market value should be calculated keeping in mind the potential use of the land.
- For determination of the market value of the land the Collector should take into consideration the minimum land value and the highest sale price for similar type of land situated in the village or the vicinity ascertained from the sale prices of transactions within preceding one year.
- Under Section 26, the date for calculation of the market value has not been specified. It should be specified at par with the Land Acquisition Act 1894, where it is the date of the notification of Section 4.
- Clause 26 (l) (a) emphasizes on circle rate to determine the market value of the land sought to be acquired. This is a depressed figure and is not representative of the true value of the land alternate ways of determining market value should be considered. The proviso to Clause 26(3), which provides "for 25% shares in the requiring authority or sister company, is unclear and this provision has to be worked out. The multiplier under

Clause 26(2) should be increased to 5, and this should be precluded from the ambit of Clause 99.

- The land compensation should be at least four times the market rates.
- Market value once determined should hold for 10 years otherwise large projects would not come.
- The determination of market value and hearing of objections should be done by the committee of judicial members, people representative and stake holder
- Price should be average of three highest prices paid during last one year or the land price should be based on the future and not on the past transaction.
- Price commission should be setup as a constitutional body to determine the price of land at different level.
- Some share of dividend of the proposed organization should be given to the affected families.

Clause 26, explanation 1: The words “3 years” be omitted and the words “one year” be added.

Clause 26(1) (a): “the minimum land value, if any, specified.....” The word ‘minimum should be omitted.

- The provision of shares and debentures up-to 20% which can be extended up-to 50% should be kept as per the R&R policy of 2007.
- In Clause 26 (1) the nearest vicinity area should be defined in terms of linear distance from a nearest urban area.
- Compensation amount should be 1.3 times that of the prevailing market rate. That would enable projects to receive land at viable costs.
- The multiplication factor for rural areas should be 3 instead of 2.
- Multiplication of market value by 2 and further provision of 100% solatium is too much for the rural areas.
- The hike in solatium from 30-100% is excessive.
- The land compensation should be six/two times the market value instead of two/one for rural and urban areas.

- Clause 28 of the LA Act, 1894 provides for benefits to all affected persons of any enhanced compensation that might be awarded by court to any affected person. A similar Section should be added in the new law too.
- Ready reckoner should be available for all rural and urban areas, it should be benchmark for determining market value and it should be updated on a yearly basis.
- It should be mentioned in the Bill that any isolated transactions/ sale deed that may be in the nature of distortion/ aberration and not representative of average market value of the land will be ignored.

7.4 Response of the DoLR on the major issues:

- Responding to the issue raised by the **Government of Madhya Pradesh** about the rationale of multiplying factor, the DoLR replied that to ensure adequate compensation to the farmers in the rural areas, value of the land is proposed to be multiplied by a factor of two.
- On the issue raised by the **Government of Uttar Pradesh** for inclusion of compulsory offer share, the DoLR stated that the land owners cannot be forcefully subjected to the risk factor associated with the acquisition of shares and hence it cannot be made compulsory.
- Responding to the issue of fixing market value raised by the **Government of NCT of Delhi**, the DoLR stated that the Bill already provides for a sophisticated system of arriving at a market value and the State Government is free to augment this mechanism as long as it does not undermine it. The Department did not accept the other suggestions of bringing Clause 63 after Clause 25 and then the provision contained in Clauses 27, 28 and 29 be made part of Explanation or illustration to such section.
- On the question of the **Union Territory Administration of Andaman & Nicobar Islands** whether illegal occupants of land can also get the

compensation, the DoLR informed that a procedure to conduct the enquiry by the Collector to determine the 'persons interested' in the land being acquired has been provided in the Bill. Clause 23 of the Bill provides for determination of such persons by the Collector. Clause 26 provides for award of the market value of the land by the Collector.

- Replying to the issue raised by the **Government of Chhattisgarh** that the distinction between rural and urban area is blurred in those rural areas which are in very close proximity to the urban areas and the registration departments have tried to come close to the guideline rates and by arbitrarily raising the rates for acquisition to 4 times in rural areas (which includes Solatium), distortions should not be created in actual market rates, the DoLR stated that while payment of market rate is an objective, another equally important objective is the payment of a sum to compensate and ameliorate the involuntary nature of the transaction.
- The DoLR did not agree with the suggestion of the **Ministry of Coal** to reduce the amount of solatium from 100 percent to 60 percent.
- The DoLR did not agree to the suggestion of the **Department of Atomic Energy** to reduce the multiplying factor from 2 to 1.5.
- To the suggestion made by the **Ministry of Railways** for inserting a sub-clause in clause 26, the DoLR stated that Clause 26(1)(a) provides that the minimum land value, if any specified in the Indian Stamp Act, 1899 should be taken into consideration for determination of the market value. It may be made mandatory that before the land acquisition proceedings start for any area, these minimum land values should be revised as per the prevalent market rate so that compensations for farmers will be on higher side.
- The DoLR did not agree to the suggestion of the **Ministry of Housing and Urban Poverty Alleviation** of equal treatment of rural and urban area while determining the market value of land.

- The DoLR has agreed to the suggestion of the **Ministry of Panchayati Raj** for using different terms in clause 26 for initial estimation of market value and the revised estimation of market value of the land.
- On the suggestion of the **Ministry of Power** to retain the existing provision of consent route under section 11 (2) of LA Act 1894 in LARR Bill – 2011, the DoLR replied that there is already a provision for seeking consent of the people before the acquisition proceeding start. This consent is not only for willingness to part away with the land, it also implies that they are willing to accept the award as per the provisions of the LARR Bill.
- On the suggestion of the **Ministry of Finance**, the DoLR has agreed to change ‘the minimum land value if any specified in the Indian Stamp Act, 1899’ by ‘market value as per the Indian Stamp Act, 1899’.
- The DoLR has agreed to the suggestion to incorporate a similar provision in the LARR Bill as per section 28 of LA Act, 1894 which provides for benefits to all affected persons of any enhanced compensation that might be awarded by court to any affected person.
- The DoLR did not accept the idea of ascertaining the market value of land by taking into account the minimum and the maximum value of similar type of land from the sale price of transactions within preceding one year.
- The DoLR has agreed to consider specifying the date of calculation of market value as per the section 4 of the L A Act, 1894.
- The DoLR has not agreed to increase the multiplier factor from 2 to 5 in the Clause 26(2) of the Bill.

- The DoLR did not accept the suggestion to hold for 10 years the market value of land by saying that market value should reflect the temporal changes in prices.
- The DoLR did not accept the idea of determining the market value of land by a Judicial Committee with stakeholder taking part in it.
- Justifying the multiplying factor of 2 for the rural areas, the DoLR stated that determination of market value of the land under the Bill is comprehensively defined. Further the suggestion for increasing the multiplying factor is not acceptable.
- On the issue of using ready reckoner and revising it on a yearly basis to get the market value, the DoLR stated that the Circle rates/ floor rates/ ready reckoner are fixed by the States/ UTs as per the Indian Stamps Act, 1899 or the relevant State Acts. It is expected that the aforesaid rates will be notified by the States/UTs for their urban/rural areas at regular interval.
- On the issue of neglecting the isolated transactions which are non representative of the average market value, the DoLR replied that the rules to be framed under the Bill may take care of the concern regarding the isolated sale deeds which are distorted or an aberration.
- On being specifically asked by the Committee about the appropriateness of appointing independent bodies on the pattern of Gujarat, the DoLR stated as under:

“In Gujarat the rates are prepared annually by the Superintendent of Stamps and Inspector General of Registration after grid-wise survey of properties. These are approved by the State Cabinet. There is no independent body in Gujarat for fixing the market prices. So, the methodology for market value calculation provided in the Bill is proposed to be retained as such.”

When the Committee desired to get specific comments of the DoLR on the varying suggestions to multiply market price which may vary from State to State and the apprehension of the industry that in the present system market price can go up 2 to 4 times annually on subsequent purchases for different projects in the same area, the DoLR stated as under:

“The concern expressed is not well founded as the market value for different types of land is fixed from time to time after following due procedure under the Indian Stamp Act, 1899 or other State/UT legislations in this regard.”

RECOMMENDATIONS OF THE COMMITTEE

7.5 Clauses 26-29 and the First Schedule of the Bill deal with the fixation of market value of land and other assets attached to the land, etc., fixation of compensation formula, solatium and total compensation package payable to the land losers. As proposed in the Bill, the compensation (including 100% solatium) will be 4 times of market value in rural areas and 2 times of market value in urban areas. The market value will be determined by the Collector based on one-half of the total number of sale deeds or the agreements to sell recorded in preceding 3 years in which highest sale price have been mentioned. In areas where minimum land value has not been specified under the Indian Stamp Act, 1899 by the appropriate authority, the concerned State Government shall specify the floor price or minimum price per unit area.

7.6 From the submission made by various State Governments, Central Ministries, farmer organizations, individuals, etc., the following points have emerged out:-

- (i) The market value or registered value or circle rates are much below the real running price of land across the country and there is tendency to register the sale deeds at minimum value to avoid the stamp duty.**

- (ii) There is no explanation/justification or scientific basis for the formula as provided in the First Schedule for fixation of land compensation. The sum so derived i.e. 4 times of market value in rural areas and 2 times of market value in urban areas suggested in the First Schedule for determination of compensation rate, factors for multiplication, solatium etc. has been questioned by various quarters.
- (iii) Similarly the demand of farmers organizations of 6/8/10 times compensation of market value is without any basis or calculation.
- (iv) Representatives of the industry and some of the State Governments have pointed out that the very high cost stipulated for land acquisition would make projects un-viable.
- (v) Some of the States like Chhattisgarh have submitted that their present land acquisition compensation has come very near to real market value and proposed compensation formula would create distortions.
- (vi) Another apprehension expressed by the State Governments/industry is that the subsequent acquisitions would be at a very high rate as the first acquisition rates would become the market value and the same would be again multiplied by 4 or 2 for the second acquisition.
- (vii) In the rural areas which are adjacent to urban areas, the concept of 4 times in rural areas and 2 times in urban areas may lead to wide difference in rates whereas the actual rates may be equal or near equal.

7.7 With a view to ensure that the land losers get their due compensation and to avoid pit falls of authority of one designated Officer, the Committee recommend that after Clause 29(1), the following Sub-Clause may be added:-

"(2) The appropriate Government shall constitute multi-member land pricing commission or authority to finalise cost of land acquisition/compensation State-wise/area-wise as determined under Clause 29(1) read with Schedule I to Bill."

The existing Sub-Clause (2) may be read as Sub-Clause (3).

7.8 The Committee also note that on taking up the matter with the DOLR, they have agreed,-

- (i) To change 'the minimum land value, if any, specified in the Indian Stamp Act, 1899' by 'market value as per the Stamp Act, 1899'.**
- (ii) To specify the date of calculation of market value as per the Section 4 of the LA Act, 1894.**
- (iii) Using different terms in Clause 26 for initial estimation of market value and the revised estimation of market value of the land.**
- (iv) To incorporate a similar provision in LARR Bill 2011 as per Section 28 of LA Act, 1894 which provides for benefits to all affected persons of any enhanced compensation that might be awarded by Court to any affected person.**

The Committee recommend that relevant clauses of the Bill may be modified accordingly.

The Committee also recommend that the land compensation calculated under Clause 26 read with First Schedule of the Bill may be treated for compensation purposes and may not be taken as base for circle rate for subsequent acquisitions.

VIII. ACQUISITION OF LAND UNDER URGENCY PROVISION

(Clause 38)

8.1 Clause 38 of the Bill seeks to provide special powers in case of urgency to acquire land in certain cases. The provisions are as under:-

38. (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances

(2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall tender payment of eighty per cent. of the compensation for such land as estimated by him to the person interested entitled thereto.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section(2) or sub-section (3) are applicable, the appropriate Government may direct that any or all of the provisions of chapters II to chapter VI shall not apply, and, if it does so direct, a declaration may be made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification under , subsection (1) section 11.

(5) An additional compensation of seventy-five per cent. of the market value as determined under the provisions of this Act, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section.

8.2 Summary of the suggestions placed before the Committee:

The **Government of Chhattisgarh** in their written submission submitted that in Clause 38(2) of Bill, the following items need to be included: -

- (i) National defence and internal security.

- (ii) Project of national or state level importance as certified by a prescribed authority of the Central or State Government.
- (iii) Rehabilitation and resettlement needs arising out of natural calamities.
- The **Government of Maharashtra** in their note suggested for inclusion of the following in the urgency clause 38(1):
 - (i) All site specific essential life sustaining infrastructure
 - (ii) Power/transmission lines for government undertakings
 - (iii) All water supply lines & water treatment
 - (iv) Ports and Airports
 - (v) National/State Highways, Roads
 - (vi) Railways
 - (vii) Sewerage treatment system
- The **Government of Madhya Pradesh** in their written submission and evidence *inter-alia* suggested:
 - (i) Reducing the time period from 30 days to 15 days in the Clause 38(1).
 - (ii) The applicability of 38(1) under Clause-38 (2) should also be extended to high priority infrastructure/ development projects of the Government of India and State Governments.
 - (iii) 'Urgency' cannot be only from natural calamities, but also from terrorist acts. Hence, the words should be "any disaster, whether man made or natural".
 - (iv) Instead of again listing items to define "urgency", the better course would be for the Government to give elaborate reasons to be put on record so as to make it justiciable. Whether Government or any Officer authorized by it has reasonably and fairly formed the opinion and not arbitrarily or capriciously this should be looked into.
 - (v) In the proviso to Clause 38(2), the words, "at least 48 hours" should be deleted.
 - (vi) The provision for giving additional 75% of compensation in cases where acquisition is through invoking Urgency should not be there. The Clause 38(5) has to be justifiable.

- The **Government of Uttar Pradesh** in their written submission suggested that in the Urgency Clause, the State Government should be given the power for law and order and paramilitary force arrangements and to add the following in the Clause 38(2):

“For larger public interest, such matters/uses which may be declared by the appropriate Government.”

- The **Ministry of Railways** in their note submitted that the provisions of urgency clause of land acquisition should also be extended to land acquisition for the public purpose of Railways as mentioned in Clause 3(za) (ii) of the definition of public purpose for railways, highways, ports, power and irrigation purposes for use by Government.

Elaborating it further the representatives of the **Ministry of Railways** stated during evidence that Railways should be included in the urgency clause because some of the Railway works may also be of urgent nature.

- The **Ministry of Power** in their written note submitted that energy security should also be included in the matters of security and use of “Urgency Clause” for setting up of power and mining projects of the Government.

- The **Ministry of Urban Development** in their note submitted as under:

“There is no necessity to define ‘urgency’ as proposed under clause 38 (2), restricting it only to the minimum area required by defence, national security or emergencies arising out of natural calamities. It should be open to the Government to take certain infrastructure projects of public importance also under urgency clause, particularly works like Mass Rapid Transport Project, drinking water supply projects and Sanitation Sewerage/Drainage projects and other core infrastructure projects. Similarly, infrastructure projects related to hosting of international events should also get covered in urgency clause, as timely completion of these are essential. It is felt that the courts have in the past made pronouncements on what constitute non-judicious invocation of urgency clause and both the Centre and the State Government are now careful in invoking the “urgency” clause and there is no necessity to define urgency statutorily.

For Clause 38(3), which provides that 80% payment should be made, it needs to include payment of solatium as well. It is also suggested that wherever land is acquired invoking urgency clause, as a safeguard, a provision can be added that “whenever provision of this clause is invoked and possession of land is taken over, requisitioning body will commence actual construction within 1 year of taking over possession of land. If the work is not commenced within one year then requisitioning body shall have to pay additional compensation of 50% of total compensation decided by Collector.”

- The **Ministry of Coal** in their written submission to the Committee stated that:

“As per Clause 38(5), an additional compensation of 75% of the market value as determined will be payable in such cases. Additional compensation of 75% for urgent land acquisition is exorbitant and may defeat the very purpose. Hence, it may be removed or reduced to 25%, as urgent acquisition if lands is required for the purpose of safety in mines and extension of working mines on the basis of cost effectiveness.”

- The **Department of Atomic Energy** suggested including ‘Uranium and Thorium industry’ in the urgency clause.
- The **Ministry of Culture** in their note stated that under the proposed Bill urgency clause can only be invoked in the event of emergencies or natural calamities. However, in the case of archaeological findings in any area, it may become necessary to acquire the land using the urgency clause with a view to protect or avoiding any damage to the archaeological site. Therefore, this should also be included in the urgency clause.
- The **Delhi Metro Rail Corporation** in their note stated that:

“Mass Rapid Transport Projects should be included in sub clause (2). Words “including solatium” may be added after compensation of such land under sub-clause (3). As a safeguard provision it can be added that “whenever provision of this section is invoked and possession of land is taken over, requisitioning body will commence actual construction within 1 year of taking over possession of land. If the work is not commenced within 1 year then requisitioning body shall have to pay additional compensation of 50% of total compensation decided by the Collector.”

- Director, **PILSARC** while tendering evidence before the Committee submitted that if urgency is to be invoked the reasons thereof should be recorded in writing.
- The representatives of **CREDAI** while tendering evidence before the Committee suggested reframing Clause 38 (3). As, provision of taking possession is under sub-clause (1) for grounds elaborated under sub-clause (3). They added, instead of sub-clause(1) or (2) it should be under sub-clause (1) pursuant to sub-clause (2).
- The representatives of the **Bhartiya Kisan Sangha** deposing before the Committee submitted that urgency clause is often misused.
- Tendering evidence before the Committee Sh. Ramachandran Pillai of the **All India Kisan Sabha** pointed out that the award of solatium is not mentioned in the urgency clause.
- The representatives of the **Adivasi Adhikar Manch** tendering evidence before the Committee suggested that urgency should never be used in tribal areas.

8.3 Other suggestions received were:

- Urgency provision under Clause 38 should be amended to ensure that the appropriate Government shall apply its mind to the need of urgency and give reasons for the same, the need for a Social Impact Assessment should not be done away with under the urgency Clause, although it may be structured differently, rehabilitation and resettlement provisions must apply even in cases of urgency, in such cases upfront compensation must be 100 % and the additional multiplier should be 100% rather than 75% as provided under Sub-clause (5) and the existence of urgency and the need of acquisition must be reviewed every year

- A new clause should be inserted as, “before invoking the urgency clause, the Appropriate Government shall apply its mind to the need for urgency and elaborate reasons to support the invocation.”
- A new clause saying "Notwithstanding anything contained in this Act or any other law for the time being in force, the urgency clause may not be involved in any area under the Vth Schedule without the consent of the Gram Sabha or Sabhas concerned; or in any area under the VIth Schedule without the consent of the Council or Councils concerned." should be added.
- Under the urgency clause if land is taken, the final award must be made within two years from the date of publication of declaration under Clause 19 and if an amount of 80% is not handed over before taking possession of land under Clause 38, then the possession of the land should be deemed to be illegal.
- Urgency clause should include small pieces of land required for the infrastructure projects, otherwise important projects may be held up.
- After clause 38 a new clause 38 A be inserted to regularize the illegal possession land taken by the Government. or its agencies and pay extra amount for the illegal occupation.
- The term emergency arising out of natural calamities should be deleted from Clause 38(2) and the Collector should not take possession without giving minimum 7 days notice (instead of 48 hours).
- In Clause 38 (2), forty eight hours notice time is too short it should be raised to 2 weeks notice

8.4 Response of the DoLR on the major issues:

- The DoLR did not accept the suggestion of the **Government of Chhattisgarh** of adding internal security, R&R needs arising out of natural calamities and projects of National or State level importance as certified by the Central or State Government.
- The DoLR also did not accept the suggestion of the **Government of Maharashtra** to include Power/transmission lines for Government Undertakings, All water supply lines & water treatment plants, Ports and Airports, National/State Highways, Roads, Railways and Sewerage treatment system in the urgency clause.

- On the suggestion of the **Government of Madhya Pradesh** to extend the applicability of urgency clause to high priority infrastructure/ development projects of Govt. of India and State Governments, the DoLR stated that In the existing Urgency Clause of the LA Act, 1894, many objections have been raised on it as its scope is quite wide. So, the restrictions proposed in Clause 38 (2) of the Bill are appropriate and should be retained as such.
- On reducing the time period from 30 days to 15 days for taking possession of land under urgency clause as suggested by the **Government of Madhya Pradesh**, the DoLR stated that the 30 days period proposed in the Bill is appropriate and should be retained as such.
- On the addition of the words “any disaster, whether man made or natural” in the clause 38(2) of the Bill, as suggested by the **Government of Madhya Pradesh**, the DoLR stated that the defence of India or National Security mentioned in Clause 38(2) of the Bill already covers such exigencies.
- On the suggestion of the **Government of Madhya Pradesh** to delete the words "at least 48 hours" in the proviso to the Clause 38(2), the DoLR stated the minimum time limit of 48 hours prescribed in Clause 38(2) of the Bill is appropriate, as the family occupying the building should have some time to remove their moveable property from such building. Also, on the issue that clause 38(5) of the Bill which provides for an additional 75% compensation amount being against the national pride, the DoLR stated that the families who are displaced under the Urgency Clause on a short notice deserve higher compensation. So, Clause 38(5) needs to be retained as such.
- On the suggestion of the **Government of Madhya Pradesh** that Instead of listing items to define "urgency", there should be a provision for the Government to give elaborate reasons to be put on record so as to make it justiciable, the DoLR stated that in the existing Urgency Clause of the LA Act, 1894, many objections have been raised on it as its scope is quite

wide. So, the restrictions proposed in Clause 38 (2) of the Bill are appropriate and should be retained as such.

- On the suggestion of the **Government of Uttar Pradesh** that the State Government should be given the power for law and order and paramilitary force arrangement and to add "for larger public interest, such matters/uses which may be declared by the appropriate Government" should be included in the Clause 38 (2), the DoLR stated that Clause 38 (2) of the Bill already provides that the appropriate Government may acquire the land for defence of India or national security or any emergencies arising out of natural calamities. The other suggestion was not agreed to by the DoLR.
- The suggestion of the **Ministry of Power** to include setting up of power and mining projects of the Government under urgency clause was not agreed to by the DoLR.
- The DoLR did not agree to include acquisition by the **Ministry of Railways** under urgency clause.
- The DoLR also did not thought it appropriate to include Mass Rapid Transport System under urgency clause.
- Rest of the suggestions did not find favour with the DoLR.

RECOMMENDATIONS OF THE COMMITTEE

8.5 Clause 38 of the Bill provides special powers to the appropriate Government to acquire land in urgency cases for the purposes of defence of India or national security or for any emergency arising out of natural calamities. Under the provisions of this Clause the Government can take possession of the land/property by giving 48 hours notice. There have been suggestions from certain State Governments that the urgency clause should also be made available for certain infrastructure projects or the project identified by the State or Central Government to come under urgent categories. The Committee feel that the proposed provisions are minimum and these should be retained as it is.

8.6 In connection with payment of compensation for the land/property acquired under the provisions of Urgency Clause, the relevant Clause provides additional compensation of 75% of the market value as determined under the provisions of this Act. As suggested by some of the State Governments/affected parties, there is ambiguity in Clause 38(5) of the Bill and this should be redefined so as to make it clear that 75% additional compensation will be of the total compensation package/solatum calculated under the First Schedule read with Clause 26 of the Bill.

8.7 After Clause 38 (5), Sub-Clause (6) may be added to provide that local administration shall make available temporary camp accommodation to the families whose house have been acquired till total compensation is paid or 90 days whichever is earlier.

**IX. PROCEDURE AND MANNER OF REHABILITATION AND RESETTLEMENT
[Clauses 39 to 41]**

9.1 The provisions in these clauses deals with appointment of Administrator, Commissioner for rehabilitation and resettlement and provisions relating to rehabilitation and resettlement to apply in case of certain persons other than specified persons. The provisions in the Clauses are as under:

"39. (1) Where the appropriate Government is satisfied that there is likely to be involuntary displacement of persons due to acquisition of land, then, the State Government shall, by notification, appoint in respect of that project, an officer not below the rank of Joint Collector or Additional Collector or Deputy Collector or equivalent official of Revenue Department to be the Administrator for Rehabilitation and Resettlement.

(2) The Administrator shall, with a view to enable him to function efficiently and to meet the special time-frame, be provided with such powers, duties and responsibilities as may be prescribed by the appropriate Government and provided with office infrastructure and be assisted by such officers and employees who shall be subordinate to him as the appropriate Government may decide.

(3) Subject to the superintendence, directions and control of the appropriate Government and the Commissioner for Rehabilitation and Resettlement, the formulation, execution and monitoring of the Rehabilitation and Resettlement Scheme shall vest in the Administrator.

40. (1) The State Government shall appoint an officer of the rank of Commissioner or Secretary of that Government for rehabilitation and resettlement of affected families under this Act, to be called the Commissioner for Rehabilitation and Resettlement.

(2) The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and proper implementation of such schemes or plans.

(3) The Commissioner shall be responsible for the post-implementation social audit in consultation with the village panchayat in rural areas and municipality in urban areas.

41. (1) Where land proposed to be acquired is equal to or more than one hundred acres, the Appropriate Government shall constitute a Committee under the chairmanship of the Collector to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of the Rehabilitation and Resettlement scheme and to

carry out post-implementation social audits in consultation with the village panchayat in rural areas and municipality in urban areas.

(2) The Rehabilitation and Resettlement Committee shall include, apart from officers of the appropriate Government, the following members, namely:—

- (a) a representative of women residing in the affected area;
- (b) a representative each of the Scheduled Castes and the Scheduled Tribes residing in the affected area;
- (c) a representative of a voluntary organisation working in the area;
- (d) a representative of a nationalised bank;
- (e) the Land Acquisition Officer of the project;
- (f) the Chairpersons of the panchayats or municipalities located in the affected area or their nominees;
- (g) the Member of Parliament and Member of the Legislative Assembly of the concerned area or their nominees;
- (h) a representative of the Requiring Body; and
- (i) administrator for Rehabilitation and Resettlement as the Member-Convenor.

(3) The procedure regulating the discharge of the process given in this section and other matters connected thereto of the Rehabilitation and Resettlement Committee shall be such as may be prescribed by the State Government.

9.2 Summary of the suggestion placed before the Committee:

- A new clause 40A should be added which should read as:
"Notwithstanding anything contained in this Act or any other law for the time being in force, if any area covered by the Vth Schedule or VIth Schedule the Administrator, Commissioner, and Rehabilitation Committee shall be composed of tribals nominated by the Gram Sabhas and Councils of the area concerned. "
- Clause 40 should be deleted in its entirety.
- Under Clause 41, Member of Parliament or Chairperson of District Panchayat should chair the meeting.
- Depositing before the Committee the representatives of the **Ministry of Power** suggested that in Clause 41(2), representatives from among the project affected people should be made member of the Committee.

9.3 Response of the DoLR on the major issues:

- On the issue of addition of new clause so that Administrator, Commissioner, and Rehabilitation Committee shall be composed of tribals nominated by the Gram Sabhas and Councils of the area concerned, the DoLR stated that the LARR Bill, 2011 already ensures participation of the women and SC/ST of the affected area in the R&R Committee at project level. Further, the Bill is PESA compliant.
- On the issue of chairing the meeting of the Rehabilitation and Resettlement Committee, the DoLR stated that under Clause 41, the function of the Committee is executive in nature.
- On the issue of annulling the Clause 40 the DoLR stated Clause 40 of the Bill provides for the appointment of Commissioner for rehabilitation and resettlement. He will be responsible for supervision for the formulation of R&R scheme and their proper implementation. Such an officer at the State level is required, so, the provision should be retained as such.

RECOMMENDATIONS OF THE COMMITTEE

9.4 After Clause 39(3), the following proviso may be added:

"Provided that the Administrator shall keep the President of the District Panchayat and the Gram Sabhas informed from time to time of the progress being made towards executing the Scheme and seek their advice on any course corrections that may be required for the effective implementation of the Scheme."

9.5 In Clause 40 (1) (3), for the words 'village panchayat', the words 'Gram Sabha' may be substituted.

9.6 In Clause 41(2), add sub-clause after (f):

(g) "the Chairperson of the District Planning Committee constituted under Article 243 ZD of the Constitution" and the existing sub-clause (g) and subsequent sub-clauses may be re-numbered.

X. NATIONAL MONITORING COMMITTEE FOR REHABILITATION AND RESETTLEMENT

(Clauses 43 & 44, Chapter VII of the Bill]

10.1 Clauses 43 and 44 of the Bill provides for the establishment of National Monitoring Committee for Rehabilitation and Resettlement for reviewing and monitoring the implementation of Rehabilitation and Resettlement Schemes or plans under this Act. The Clauses provides as under:

- "43. (1) The Central Government shall constitute a National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act.
- (2) The Committee may, besides having representation of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields.
- (3) The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed.
- (4) The Central Government shall provide officers and other employees to the Committee necessary for its efficient functioning.
44. The States and Union territories shall provide all the relevant information on the matters covered under this Act, to the National Monitoring Committee in a regular and timely manner, and also as and when required."

10.2 Summary of the suggestions placed before the Committee

- The **Government of Madhya Pradesh** submitted before the Committee that the State Government has the strong reservation on Chapter-VII of the Bill which pertains to establishment of a "National Monitoring Committee for Rehabilitation and Re-settlement" under Clause 43(1). This provision apparently contradicts the provision incorporated under Clause 3 (e) whereby the State Government has been declared as "Appropriate Government" in relation to the rehabilitation and resettlement. As the rehabilitation and resettlement are totally in the domain of the concerned State Governments, the provision of establishing National Monitoring Committee for Rehabilitation and Resettlement under Clause 43 (1) should be augmented by a provision' to constitute a "State Level Monitoring Committee for Rehabilitation and Resettlement under the Chairmanship of the Chief Minister.

- The **Government of Uttar Pradesh** also suggested to replace 'Central Government' with 'Appropriate Government' and State Government should be given powers to constitute their Monitoring Committees in place of National Monitoring Committees.
- The representatives of '**Sangharsh**' submitted before the Committee that there should be an autonomous National Development Commission alongwith there should be a State Commissions. The National Commission should be given Constitutional Authority, which can look into inter-state or State level unresolved issues.
- **Akhil Bhartiya Vanvasi Kalyan Ashram** tendering evidence before the Committee were also of the opinion to have a State Level Monitoring Committee and suggested to replace the word 'may' with 'shall' in the clause 43(2) of the Bill.

10.3 **Response of the DoLR on the major issues**

In a written reply submitted to the Committee on the aforesaid views the Department stated that a Committee at the Central level is necessary to review and monitor the implementation of Rehabilitation and Resettlement schemes or plans under this Bill. Under Clause 40 of the Bill, a Commissioner for Rehabilitation and Resettlement is already proposed at the State level for supervising the formulation and implementation of R&R Schemes.

RECOMMENDATION OF THE COMMITTEE

10.4 The Committee find merit in the suggestions of the Governments of Madhya Pradesh and Uttar Pradesh for making provision of State Level Monitoring Committees i.e. to cover jurisdiction of each appropriate Government defined under Clause 3 (e) of the Bill. The provisions for the proposed National Monitoring Committee may be reworked in a manner which empowers it with the mandate of overseeing the Rehabilitation and Resettlement schemes of the Central Government projects (within the powers of appropriate Government), to sort out differences between one or more State Committees where the project area is in more than one State and to coordinate with State Monitoring Committees for finding solutions to the unresolved issues. Relevant Clauses may be amended accordingly.

10.5 In Clause 43(2), after the words 'relevant fields', the words 'and representatives of the local self-government' may be added.

XI ESTABLISHMENT OF LAND ACQUISITION, REHABILITATION AND RESETTLEMENT AUTHORITY

[Clauses 45 – 68]

11.1 Clauses 45 to 68 deal with establishment of Land Acquisition, Rehabilitation and Resettlement Authority and matters related thereto. Clause 58 seeks to provide that any person who has not accepted the award may refer the matter to the Authority through the District Collector. Clause 63 of the Bill seeks to provide the manner in which the amount of compensation is to be determined; Clause 64 seeks to provide the form of award; clause 65 seeks to provide that the cost shall be paid by the Collector when the award of the Collector is not upheld; Clause 66 seeks to provide that the Collector may be directed to pay interest on excess compensation and clause 67 seeks to provide manner of re-determination of amount of compensation.

11.2 Summary of the suggestions placed before the Committee:

- The **Government of Madhya Pradesh** in their submission to the Committee stated that in view of the First and Second Schedules provided in the draft Bill Clause 63 has now lost utility and relevance totally. The Authority is supposed to judge whether the award passed by the Collector is in order in terms of First and Second Schedules. Now, the principles as suggested in this section on the lines of Section 23 of the Act, 1894 are of no additional consequence. After "Firstly", rest of the points are repetitious, noncore and dispensable.
- The **Ministry of Petroleum & Natural Gas** submitted with reference to Clauses 63, 67, 68, 69 and 70 that in order to protect the industry's interest all cases pertaining to the LARR should be decided within a reasonable time limit from the date of payment of initial compensation as decided by the Authority. The time frame may be stipulated for issuance of orders for payment of enhanced compensation. Interest liability due to any delay beyond the stipulated period should not be borne by the purchaser of the land. Interest payable should be from the date of final order and rate of interest should be linked to the prime lending rate.

- Director, **PILSARC** in his written memorandum submitted to the Committee suggested that the cost provision under clause 65 be deleted and where compensation is delayed there should be a flat rate of interest of 15%.
- **Adivasi Adhikar Manch** in their submission before the Committee submitted that the apportionment of compensation should not be linked only to ownership of the land and its value but should also be linked with livelihood approach.

11.3 The other suggestions received were:

- Increase in time period of 3 months to 9 months in Clause 67 (1) of the Bill.
- In the existing Act 12% interest on additional amount is payable from the date of notification till the date of award and it should remain as such.

11.4 Response of the DoLR on the major issues:

- Responding to the suggestion of the **Government of Madhya Pradesh**, the DoLR stated that Clause 63 provides broad principles on which compensation and R&R has to be based. It is to be retained as such and the essence of it should be made part of Clause 26.
- In response to suggestion made by the **Ministry of Petroleum & Natural Gas**, the DoLR stated that Clause 54(4) of the Bill already provides a time limit of six months for the disposal of cases by the Authority. The interest rates of nine per cent per annum mentioned in Clause 66 of the Bill is appropriate and should be retained as such.
- The DoLR has agreed to the suggestion to pay 12% interest per annum on additional compensation amount payable from the date of notification till the date of award.

RECOMMENDATIONS OF THE COMMITTEE

11.5 In Clause 58 (1), for the word 'person', the words 'person or group of persons' may be substituted.

11.6 The Committee would like the Department of Land Resources to consider the technical suggestions received from various Departments/Organisations/individuals w.r.t. time lines, rate of interest etc. and to consider the genuine concerns of the affected people. Also the suggestion to pay 12 per cent interest per annum on addition of compensation amount payable from the date of notification till the date of award, as agreed to by the DoLR, may be suitably incorporated in the Bill

XII. TEMPORARY OCCUPATION OF LAND

[Clauses 75 to 77]

12.1 Clause 75 provides that the Government may direct the Collector to take temporary possession of waste or arable land for any public purpose or for company for a period of three years. Under Clause 76 of the Bill, Collector is empowered to enter and take possession of land after payment of compensation for temporary occupation. Relevant provisions of the Bill are as under:

"75. (1) Whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the person interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken there from, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the Compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Authority.

76. (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 58, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons Interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company.

77. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Authority concerned."

12.2 Summary of the suggestions placed before the Committee:

- Replace the word "arable land" with "desert, seacoast land, hilly land rocky land and uncultivable land" and the word "company" should be removed and land should be acquired for Government companies only.
- Two Clauses may be added providing that no temporary occupation of any land in the Vth and VIth Schedule areas shall be permitted without the consent of the relevant Gram Sabha or Councils as the case may be. Since the minerals extracted in the mining are a community resource a social impact assessment and a Tribal Development plan must be prepared in case any mining activity is to take place in any land under Vth and VIth Schedule.
- The entire Chapter dealing with the 'temporary occupation' should be deleted.
- The representatives of the **Ministry of Power** during their evidence before the Committee submitted that the Clause relating to the temporary occupation may be suitably amended or clarified to ensure that where right of way is required for laying transmission lines or setting up underground conveyance systems, the demand will not be for acquisition of land. Accordingly, it should be treated under temporary occupation, they need not be forced to acquire land.
- Director, **PILSARC** who appeared before the Committee was of the view that there is no need for the provision in the Bill for the temporary occupation.

12.3 Response of the DoLR on the major issues:

- During the course of examination, the Committee pointed out that some of the individuals/experts were of the opinion that there was no need for the provisions for 'temporary occupation' in the Bill. Asked about its justification, the DoLR stated:

"In some cases only temporary occupation of the land is required which after certain time is returned to the original owners. If such land is acquired as per the provisions of the LARR Bill, 2011 then not only such affected persons will be displaced permanently, the acquired land also cannot be put to any productive use by the Government. So, in such cases, provision for temporary occupation of land is necessary"

12.4 The Committee further pointed out that apart from 'temporary occupation' by the Government for public purpose, there was provision for 'a Company also'. Besides under Clause 76 temporary occupation could be converted into a land acquisition for Government or for a Company. Asked about its justification, the Department of Land Resources replied:-

"The words 'or for a Company' in clause 75(1) may be deleted".

12.5 The suggestion for specific provision for Schedule V and VI areas was not agreed by the DoLR.

RECOMMENDATION OF THE COMMITTEE

12.6 The Committee are happy to note that the Department of Land Resources has agreed to exclude 'or for a company' for the purposes for temporary occupations in Clause 75. They accordingly, recommend that this amendment should be reflected not only in Clause 75(1) but in Clause 76 also.

The Committee also find that under Clause 76 of the Bill, temporary occupation can be converted into permanent acquisition. The Committee, therefore, recommend that under Clause 76 a new Proviso may be added to indicate that in Schedule V and Schedule VI areas, the provision to convert temporary occupation into permanent acquisition will be with due approval of Gram Sabha (s) or Autonomous District Councils (ADCs), as the case, may be.

XIII. OFFENCES AND PENALTIES

[Clause 78 to 84]

13.1 This Chapter of the Bill provides for punitive action in case of offence by companies as well as by the Government Department.

Relevant provisions of the Bill are as under:

- "78. (1) If a person, in connection with a requirement or direction under this Act, provides any information or produces any document that the person knows is false or misleading, he shall be liable to be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one lakh rupees, or with both.
- (2) Any rehabilitation and resettlement benefit availed of by making a false claim or through fraudulent means shall be liable to be recovered by the appropriate authority.
- (3) Disciplinary proceedings may be drawn up by the disciplinary authority against a Government servant, who if proved to be guilty of a *malafide* action in respect of any provision of this Act, shall be liable to such punishment including a fine as the disciplinary authority may decide.
79. If any person contravenes any of the provisions relating to payment of compensation or rehabilitation and resettlement, every such person shall be liable to a punishment of six months which may extend to three years or with fine or with both.
80. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
- Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- Explanation.*— For the purposes of this section,—
- (a) “company” means any body corporate and includes a firm or other association of individuals and a Requiring Body; and (b) “director”, in relation to a firm, means a partner in the firm.

81. Where an offence under this Act has been committed by any department of the Government, the head of the department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this section shall render any person liable to any punishment if such person proves that the offence was committed without his knowledge or that such person exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the head of the department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
82. No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall be competent to try any offence punishable under this Act.
83. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence under this Act shall be deemed to be non-cognizable.
84. No court shall take cognizance of any offence under this Act which is alleged to have been committed by a Requiring Body except on a complaint in writing made by the Collector or any other officer authorised by the appropriate Government or any member of the affected family."

13.2 Summary of the suggestions placed before the Committee:

- The **Ministry of Railways** in their written reply submitted to the Committee that such provisions shall give rise to unnecessary concerns and may go against the interest of land losers in denying them the reasonable compensation of land so acquired. These may be repealed as sufficient provisions already exist with each Department Government otherwise also beyond such mala-fide action under departmental proceedings.
- The **Ministry of Coal** has submitted that wherever penalty provisions have been incorporated, provision for appeal may also be made.
- The **Union Territory Administration of Andaman & Nicobar Islands** suggested that Clause 80 (1) opens question for interpretation, small lapses (bona-fide) could become a criminal offence.

- The **Government of Bihar** in regard to Clause 81 stated that it is difficult to comprehend the notion of a "Department" committing an offence. Offences are committed by an individual or a group of individuals. Even in a Government Department, there are field establishments and public functionaries operating at the cutting edge level. No vicarious administrative or criminal liability may be fixed on a Head of the Department for omissions and commissions at the ground level; or else, it will militate against the basic tenets of Jurisprudence.

- The **Government of Madhya Pradesh** in their written submission stated

"this Chapter has totally turned the tables on the previous scheme of penalties envisaged in the 1894 Act. Earlier obstructing the land acquisition proceedings was an offence. Now for some reason that provision is removed as if we have no history of ill-motivated obstructions. Now this Chapter has penalties for offence by companies and by Government Companies. Clause-81 of the draft Bill provides that where an offence under this Act has been committed by any department of the Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. This will have a new category of "deemed offenders". Head of Department might not even be knowing what mistake someone in his vast department has committed, but here is one Bill hell-bent on making him an offender almost by proxy. Conceptualizing this type of surrogate offence is indicative of the deep animus against the bureaucracy."

- It has been further added:-

"This is a Civil Act. There is no need to make it criminal. The idea of sending people to jail for three years for contravening the provisions of this Draft Bill is nauseating. In civil matters people are not incarcerated or executed. Other laws are good enough to take care of situations where someone's conduct is egregious and had (1) a malicious intent, (2) gross negligence, or (3) a willful disregard for the right of others. What this Draft Bill does is to just look at the contravention without looking into these three major aspects of culpability. Therefore this entire chapter should be discarded."

Explaining it further, the representatives of the **Government of Madhya Pradesh** submitted during evidence that the entire Clause needs to be redrafted from the scratch.

- The **Land and Building Department, Government of National Capital Territory of Delhi** in regard to Clause 79 which provides penalty for contravention of Provisions of Act, submitted that Rehabilitation & Resettlement benefits obtained on false information shall be recovered by the Appropriate Authority from the beneficiary as arrears of Land Revenue. Regarding Clause 80 (2), they submitted that the role of both in requisition of land should be acknowledged and made liable for penalties for any misconduct.

13.3 **Response of the DoLR on the major issues:**

- The Department did not agree with the suggestions made by the **Ministry of Railways and the Union Territory of Andaman and Nicobar Islands** with regard to the exclusion of the Clause 80(1) from the Bill.
- Commenting on the views expressed by the **Government of Bihar** and Madhya Pradesh, the Department of Land Resources stated that Proviso to Clause 81 already provides that any person will not be liable to punishment if such person proves that the offence was committed without his knowledge or that such person exercised all due diligence to prevent the commission of such offence, and as such sufficient safeguards have been provided in the relevant Clauses.

RECOMMENDATION OF THE COMMITTEE

13.4 The Committee find that several State Governments and Central Ministries are apprehensive of the provisions of offences and penalties against the Government officials. The Committee would like the Department of Land Resources to examine this aspect afresh in consultation with Department of Personnel and Training (DoPT) so that the provisions are in line with the Government policy in regard to punitive provisions dealing with negligence, non-performance and willful offences/corruption by the officials.

13.5 In Clause 80 (1), after the words 'punished accordingly', the words 'under IPC or any other relevant law' may be added.

XIV. CHANGE OF PURPOSE, RETURN OF UNUTILISED LAND, SHARING OF PROFIT, ETC.

A Change of Purpose for Use of Land [Clause 93]

14.1 Clause 93 of the Bill provides that "No change from the purpose or related purposes for which the land is originally sought to be acquired shall be allowed."

14.2 Summary of the suggestions placed before the Committee

- The **Government of Uttar Pradesh** in their written views submitted that Clause 93 is in contradiction with the provisions of the Clause 95, which has a provision of 'Land Bank' as the land kept in 'land bank' of the appropriate Government can be further used for different 'public purposes'. Further they suggested that there should be a provision that land once acquired can be used for any public purpose.
- The **Government of Bihar** submitted that while no change in purpose is allowed vide Clause 93, change is implied even by a cursory reading of Clauses 95 and 96.
- The **Government of Madhya Pradesh** submitted that the provision Clause 93 is in contradiction of Clause 95, where a Land Bank for the unutilized land is sought to be constituted.
- The **Union Territory Administration of Andaman & Nicobar Islands** also pointed out that 'While no change in purpose is allowed vide Clause 93, change is implied even by a cursory reading of Clauses 95 and 96.'
- The **Ministry of Panchayati Raj** submitted that "Clause 93 of the Bill may be suitably expanded to provide that any change from the purpose for which the land was originally sought would render the land acquisition proceedings null and void and in that event, the land would revert to its original owner.
- **Federation of Indian Chambers of Commerce of India (FICCI)** submitted that the land use changes could be notified beforehand so that landowner could get a better price for their land.

14.3 Other suggestions received were:

- Sometimes land is acquired on the pretext of development but 'land use change' results in perpetual threat of eviction to local communities and lead to resentment among people affected. Therefore, wide range of discretionary powers enjoyed by Ministries and senior bureaucrats both at the Centre and State should be abolished.
- Provision in Clause 93 and 95 are contradictory as one allows the change of purpose and other prohibits it.

14.4 Response of the DoLR on the major issues:

- On the suggestion of the **Government of Uttar Pradesh** DoLR stated that the Rules to be framed under the Bill may provide details with regard to use of the land kept in the Land Bank.
- In response to suggestion of the **Government of Madhya Pradesh**, Andaman and Nicobar Islands and others, DoLR stated that the Clause 93 is proposed to be retained as such and in Clause 95 'Land Bank' is proposed to be replaced by 'Land owners'.
- Clarifying to the suggestion made by the **Ministry of Panchayati Raj**, the DoLR stated that the Clause 93 of the Bill already provides that no change from the purpose or related purposes for which the land is originally sought shall be allowed.
- In response to suggestion of **FICCI**, the DoLR submitted that the Bill already ensures comprehensive land compensation and solatium, therefore, the suggestion is not agreeable.
- Regarding discretionary powers, DoLR stated that the Bill does not provide any discretionary power.

B. Change of Ownership [Clause 94]

14.5 Clause 94 of the Bill provides that "No change of ownership without specific permission from the appropriate Government shall be allowed."

14.6 Summary of the suggestion placed before the Committee

The **PRS Legislative Research** their his written submission submitted that it is not clear whether this applies only to the first transfer or whether every subsequent transfer will also require Government permission.

The representative of **PRS Legislative Research** further, submitted during the evidence that there should be an exception Clause saying that the provision is applicable to Companies but not the project affected people who are allotted land or housing.

14.7 In their response, the DoLR clarified that every change of ownership will require specific permission of the appropriate Government.

C. Return of Unutilized Land [Clause 95]

14.8 Clause 95 of the Bill provides that "When any land or part thereof, acquired under this Act remains unutilized for a period of ten years from the date of taking over the possession, the same shall return to the Land Bank of the appropriate Government by reversion"

14.9 Summary of the suggestions placed before the Committee

- The Representatives of the **Government of Madhya Pradesh** in their evidence before the Committee submitted that the period of utilisation of acquired land should be 5 years and not 10 years.

- The **Government of Uttar Pradesh** submitted that the word 'unutilized' in Clause 95 of the Bill should be defined clearly and pointed out that in various project, the land to be utilized has a longer gestation period.
- Depositing before the Committee the representatives of the **Government of Uttar Pradesh** also submitted that sometimes the projects get delayed for certain reasons or due to certain legal hassles and so many other reasons. In those cases the purpose might get changed. So, if the land continues to be vested with the Government in due course of time owing to certain reasons if the original project is dropped then the land should go to the land bank so that it can be utilized for some other public purpose.
- The **Government of Bihar** submitted that the period should be reduced to 5 years and the land should return back to the land owner.
- The **Union Territory Administration of Andaman & Nicobar Islands** submitted that 10 years is a long time, by this time, the land if let unattended would lead to encroachments and involvement of officials in abetting such acts cannot be ruled out. They also suggested reducing the time period to 5 years from the present 10 years and returning the land to the land owner.
- The **Ministry of Railways** in their written submission stated:

"Railways projects have a comparatively longer gestation period necessitated due to acquisition of land in several States as well as availability of funds. Further, in respect of Railway projects, land is acquired considering the future growth and requirement necessitated due to increase in goods and passenger traffic, for which augmentation of such facilities after commissioning of project becomes necessary. Land acquired, keeping future use in view, should remain with Railways who should be free to utilize the said land for any public purpose, at the appropriate time."

- The **Ministry of Mines** submitted as under:

"The draft Bill should provide that after complete land use (e.g. complete extraction of minerals), the land should be returned back to the community (and in a form that is useful to them within the scope of reasonable land use planning e.g. as a water body in case of excavated mine or a forest or grassland where soil cover can be replaced) for which the draft LARR Bill should provide adequately for identifying a local authority, may be at District level or at Panchayat level, to whom the acquired land could be returned after completion of mining operations and reclamation is complete."

- The **Ministry of Power** submitted that if 50 per cent of work has been done, there should be no provision for return.

Further, while tendering evidence before the Committee the **Secretary, Ministry of Power** submitted that option to the original land owner to claim the land back the land should also be there.

- The **Ministry of Urban Development** in their written submission to the Committee stated that:

"The concept of 'Land Bank' implies that the Urban Development Authority acquires land in anticipation of the future requirements of a city including land for industrial and commercial use. The main advantages are that it allows the purchase of land for planned public purposes and provides a tool to influence the development of city in a planned manner. The concept of land banking can also be used as a means to control land market, prevent land speculation and recapture some of the betterment created through the planned development. Ideally, in order to control haphazard development in urban fringe areas, land banking could be implemented, where agricultural lands could be acquired at the current value. Land which is acquired for the land bank can be purchased under the prevailing Land Acquisition Act or even can be acquired non-compulsorily through negotiations. A successful implementation of an extensive land bank scheme would, however, require the existence of a clear objective. Further, the land bank mechanism would be successful, only if it is protected effectively and land use regulations are implemented subsequently in a rigorous manner."

- The **Delhi Metro Rail Corporation** stated that the implementation of this Clause may be difficult.
- **Bhartiya Kisan Sangha** in their evidence submitted that Land Bank should be made from non- agricultural land.
- Appearing before the Committee to tender his evidence the representative of PRS Legislative Research, pointed that Land bank is not defined in the Bill.
- **Adivasi Adhikar Manch** in their evidence before the Committee submitted that at least for tribals and also for dalits it should go back to the community from whom it has been taken.

14.10 Other suggestions received were:

- Farmers should have right to buy back their land.
- The unutilized land should be returned to the original owner.
- The Concept of Land Bank is flawed. In cases where all of the acquired land remains unutilized it must be returned to the acquiree and in cases where parts of the land remain unutilized, the land must be returned to the acquiree in proportion to the area of their land acquired.
- Return of unutilized land should be applicable only in cases of willful default and not part completed projects or cases of delay in obtaining requisite statutory clearance.
- Power projects have longer gestation time and they have provision for future expansion also.
- The Bill does not deal with the compensation to the requiring body if return of unutilized land takes place.
- It is necessary to determine with precision the composition of land bank, how it is to be administered and how to consolidate the small tracts of unutilized land which are being returned back to the land bank so that such un-utilized land can be effectively utilized.
- If the land is not utilized in 4 years it should be returned to the original land owners after payment of 1/4th of the land compensation.

14.11 Response of the DoLR on the aforesaid issues:

- The Department in their reply have stated that the period mentioned in the Clause is appropriate and reducing it from the present 10 years to 5 years is not acceptable. Further they also stated that 10 years is a long time and during such span of time all the clearances will be taken and the projects will be completed.
- Responding to the concerns of the **Ministry of Railways**, the DoLR clarified that the Railways Act, 1989 is mentioned in the Fourth Schedule so, the provisions of the LARR, Bill will not be applicable on the acquisitions under the Railways Act.
- The DoLR did not agree to the suggestion of the **Ministry of Power** for the provision of no return of land if 50 percent work has been done.
- On the apprehension expressed by the **DMRC**, the Department stated that Clause 95 of the Bill will ensure that only the minimum areas of scarce land resources are acquired. Further, such unutilized lands will be put to some other useful public purpose.
- In their written submission to the Committee the DoLR stated that "In clause 95 'Land Bank' is proposed to be replaced by 'Land Owners'."

D. Sharing of higher consideration in cases of Transfer of Land [Clause 96]

14.12 Clause 96 of the Bill provides that “Whenever the ownership of any land acquired under this Act is transferred to any person for a consideration, without any development having taken place on such land, twenty per cent of the appreciated land value shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired.”

14.13 Summary of the suggestions placed before the Committee:

- The **Government of Bihar** submitted that the word 'transferred' should be substituted by the word 'leased'.
- The **Government of Uttar Pradesh** stated that the calculation of the profit in the transfer of the acquired land will be very controversial and the meaning of 'any development' is not clear and meaning of 'appreciated land value' is also not clear. These should be clearly defined.
- The **Government of Maharashtra** suggested regarding the provision of sharing of 20% of the appreciated value of the land with the original owners, 20% of the amount may be given at the time of Registration by keeping a special note in the other column of record of right.
- Depositing before the Committee the representatives of **CREDAI** submitted that offer of 20 percent share in increase of land value in every transaction in the next 10 years is difficult to implement and is also contrary to the Transfer of Property Act and the Indian Contracts Act. All are contravened through this clause. It is not clearly provided as to whether this provision will be applicable with respect to the transfer of built-up units/apartments with undivided interest on land underneath the building.

14.14 The other suggestions received were:

- 80 per cent of the unearned profit should be given back to the farmers.
- The provision of 20 percent benefit sharing on the price rise is not practical.
- 80 percent of the appreciated value should be shared among affected persons.

14.15 Response of the DoLR on the major issues:

- The DoLR did not accept the suggestion of the **Government of Bihar** to replace the word 'transferred' to 'leased'.

- Responding to the issue raised by the **Government of Uttar Pradesh**, the DoLR stated that the details may be provided in the rules to be framed under the Bill.
- On the issue raised by the **Government of Maharashtra** the DoLR stated that details with regard to sharing of 20 percent appreciated value may be provided in the Rules to be framed under the Act.
- The DoLR submitted that 20 percent amount mentioned in clause 96 is adequate and should be retained as such.

RECOMMENDATION OF THE COMMITTEE

14.16 The Committee note that Clauses 93, 94 and 95 of the Bill deal with 'no change of purpose', 'no change of ownership without permission of the appropriate Government' and 'return of unutilised land'. Some of the State Governments and Central Ministries have brought out contradictions/overlapping in these Clauses. On being taken up the issue with the DoLR, by the Committee, DoLR has agreed to change 'Land Bank' to 'Land owners' in Clause 95 of the Bill. This will imply that un-used land shall return to the land owners. Clause 95 may be amended accordingly.

14.17 Another issue that came before the Committee was return of land due to its non-utilisation in 10 years or five years. Apart from non-officials, some of the State Governments have also submitted that the provision in Clause 95 should be 5 years. The Committee, accordingly, endorse the State Governments view for return of the land, if not used, after 5 years from the date of possession.

14.18 The Committee also find that there are unsettled issues which require due clarifications either in the Bill or in the Rules to be framed thereunder. These are:-

- (i) Whether the change of land use if sought by acquiring authority will have priority over demands of land owners for return of unutilised land.**
- (ii) Price/Value to be paid by owners for taking back the land.**
- (iii) The change of land use to be for 'public purpose' only.**
- (iv) Determination of appreciated value of which 20% is given back to the owners.**
- (v) Dealing with issue of part use of acquired land.**

The Committee recommend that these issues may be examined afresh. While dealing with these issues, primary concern should be for land losers and land use for public purpose.

14.19 The Committee's examination of the provisions of the Bill has also revealed that even though the concept of 'Land Bank' has been provided in some of the Clauses, it has not been defined in the Bill. The Committee are of the view that even in Clause 95 where 'Land Bank' will be replaced by 'Land Owners', still there may be need for retaining 'Land Bank' for the situations where the land owners do not come forward to re-claim their land. Similarly, the appropriate Government should form 'Land Bank of un-fertile, waste-lands' for use by the industry or infrastructure projects. The Committee, therefore, would like the DoLR to amend the relevant Clauses accordingly.

XV. POWER OF THE GOVERNMENT TO AMEND THE SCHEDULES (Clause 99)

15.1 Clause 99 of the Bill provides as under:

“(1) The Central Government may, by notification, amend or alter any of the Schedules to this Act.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.”

15.2 The contents of the Schedules of the Bill are briefly as under;

First Schedule: provides for components of compensation and manner of determination of land value to be paid as compensation to the land owners.

Second Schedule: lists 12 elements of Rehabilitation and Resettlement entitlements for all the affected families both for land owners and the families whose livelihood is primarily dependent on land acquired in addition to those provided in the First Schedule.

Third Schedule: enumerates 25 infrastructural amenities to be provided for resettlement to the affected families

Fourth Schedule: lists 16 Central legislation sought to be exempted from the provisions of the Bill.

15.3 **Summary of the suggestions placed before the Committee:**

- Depositing before the Committee, Director, **PILSARC** submitted that large parts of this clause which are in-fact heart of the statute have to come to Parliament but goes through ordinary laying procedure. The words ‘may by notification’ is a serious issue and should not be there in the Bill.
- Sh. Ramachandran Pillai of the **All India Kisan Sabha** while tendering evidence before the Committee submitted that the clauses 98 and 99 should not be there in the Bill.

- During the evidence Director, **PILSARC** was critical of the provision of Clause 99 and submitted that the Clause 99 is the heart of the statute, it has to come to parliament. But then goes through ordinary laying process.

15.4 During the course of examination, the Committee pointed that whenever required, the Government should bring Amendment Bills, so that these could be discussed in the House or referred to the Parliamentary Standing Committee for detailed examination and enquired as to why the Government wanted to retain the power to amend the key features of the proposed legislation through indirect legislation, the DoLR in a note replied:

“Clause 99 of the Bill provides the procedure for amending or altering any of the Schedules of the Act. A copy of every notification proposed for this purpose shall be laid in draft before each House of the Parliament. The notification shall be issued in such modified form as may be agreed upon by both the Houses of Parliament. This procedure has been vetted by the Ministry of Law and Justice. In many laws recently passed by the Parliament such procedure has been prescribed.”

15.5 When asked from the **Ministry of Law**, whether it was a common practice to make such provisions in the Bills/Acts for giving powers to Central Government to amend major aspects of the Acts through this procedure, the Legislative Department, Ministry of Law & Justice replied in a note:

"In our view, the matters specified in the Schedule to the Land Acquisition, Rehabilitation and Resettlement Bill, 2011 are matters of procedure/administrative in nature and therefore, provided in the Schedule. In a number of Central legislations containing Schedule or Schedules, there is legislative practice to give power to the Central Government to amend such Schedule or Schedules through notifications."

15.6 Spelling out the difference in procedure of amendments to the provisions of the Acts through notification laying procedure vis-à-vis bringing amendment Bills to amend the provisions of the Bill including their Schedules, the **Legislative Department** stated:

"The matters specified in the Schedule relate to procedural/administrative matters and therefore, may require frequent modifications at short intervals at times by notification in view of changing administrative procedure, social and economic conditions such as inflation, etc. However, accountability to Parliament is provided by laying notification before each House of Parliament which can amend or rescind the said notification. In case, such modifications are to be

carried out by an amending Bill, it would involve inter-Ministerial consultation on such amendment relating to matters of procedure/ administrative details, preparation of Note for the Cabinet, soliciting approval of Cabinet, obtaining recommendation of the President under Clause (1) and (3) of Article 117, if required, introducing the Bill, assisting the Parliamentary Standing Committee, processing of the recommendations of the Parliamentary Standing Committee, further inter-Ministerial consultations, preparation of Note for the Cabinet, soliciting the approval of the Cabinet and introduction/moving of amendments to the Bill to give effect to the recommendations of the Parliamentary Standing Committee. In the entire procedure, the proposed amendments by a Bill relating to procedural/ administrative details may require undergo further changes or become redundant. Therefore, as per legislative practice, the amendments relating to procedural or administrative details are delegated to the Central Government with power to amend such Schedule by notification and making a provision for laying thereof before both Houses of Parliament which can amend or rescind the modifications."

15.7 The Ministry also gave the list of following Acts, which according to them contain provisions similar to Clause 99 of the Land Acquisition, Rehabilitation and Resettlement Bill, 2011:

*"(a) The Agricultural and Processed Food Products Export Development Authority Act, 1986 (2 of 1986);
(b) The Multi-State Cooperative Societies Act, 2002 (39 of 2002);
(c) The Right to Information Act, 2005 (22 of 2005);
(d) The Gram Nyayalayas Act, 2008 (4 of 2008);
(e) The Right of Children to Free and Compulsory Education, 2009 (35 of 2009)."*

15.8 Apart from the above, the Committee also perused the provisions of the following Acts:-

- (i) The Special Economic Zone Act, 2005;
- (ii) The Industrial Development Bank (Transfer of Undertaking and Repeal) Bill, 2003;
- (iii) The Limited Liability Partnership Act, 2009

RECOMMENDATION OF THE COMMITTEE

15.9 Clause 99 of the Bill provides that Central Government may amend or alter any of the Schedules to this Act by issuing a Notification. The Notification shall be required to be laid in each House of Parliament and taken up for approval or otherwise as per the procedure. Some of the legal experts submitted before the Committee that this procedure of amending the proposed Acts through

Notification is generally done under subordinate legislation mainly for routine administrative matters. However, in the present case, the provision has been made for amending the four Schedules of the proposed Act by Notification. The Schedules are soul of the Bill and deal with determination of compensation for land vide First Schedule, elements of rehabilitation and resettlement of affected families vide Second Schedule, elements of infrastructure facilities for the resettled population vide Third Schedule and exemption of the 16 Central Acts from the provisions of the Bill vide Fourth Schedule. The Committee on perusal of the Acts quoted by the Ministry under which similar provisions reportedly exist and also from the provisions of some other Acts, have gathered that the provision of empowering the Central Government to amend the provisions of the Act by issuing a Notification is only used mainly for routine administrative matters. The Committee strongly feel that the Schedules to the LARR Bill deal with the core issues in the matters of land acquisition, provision of land compensation, provision for resettlement and rehabilitation and exemption of Central Acts from the provisions of the Bill. The Government argument that these are matters of routine administrative nature is not at all convincing. The Ministry of Law in their submission before the Committee have pointed out that amending the Acts through normal procedure, i.e., by bringing amendment bills require inter-ministerial consultations, seeking approval of the Cabinet, obtaining recommendations of the President under Article 117 and assisting the Parliamentary Committee, etc. take considerable time. The Committee find that there is no substitute for following the proper procedure/route whenever amendment to the core issues relating to the Acts are required. Accordingly, the Committee recommend that the Clause 99 of the Bill should not form part of the Bill which will ensure that whenever there is a need to amend the Schedules to the Act, the Government would require to bring an amendment bill. The same will be taken up in the Parliament/Parliamentary Committee as per established procedure for the purpose.

**XVI. LAND ACQUISITION PROCESS UNDER ACT NO.1 OF 1894 VIS-A-VIS
REPEAL AND SAVINGS
(Clauses 24 and 107)**

16.1 Clause 24 of the Bill seeks to provide that land acquisition process under the Land Acquisition Act, 1894 shall lapse where the award has not been made and possession of land has not been taken before the commencement of the proposed legislation and Clause 107 seeks to make provisions for savings and repeal of the existing Land Acquisition Act, 1894. Clauses 24 and 107 of the Bill provides as under:

“24. (1) Notwithstanding anything contained in this Act, in any case where a notification under section 4 of the Land Acquisition Act, 1894 was issued before the commencement of this Act but the award under section 11 thereof has not been made before such commencement, the process shall be deemed to have lapsed and the appropriate Government shall initiate the process for acquisition of land afresh in accordance with the provisions of this Act.

(2) Where possession of land has not been taken, regardless of whether the award under section 11 of the Land Acquisition Act, 1894 Act has been made or not, the process for acquisition of land shall also be deemed to have lapsed and the appropriate Government shall initiate the process of acquisition afresh in accordance with the provisions of this Act.

107. (1) The Land Acquisition Act, 1894 is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or effect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeals.”

16.2 Summary of the suggestions placed before the Committee:

- Depositing before the Committee the representatives of the **Government of Madhya Pradesh** stated that the land acquisition cases should not deem to have been lapsed where substantial payment has been made.
- The **Government of National Capital Territory of Delhi** in their written submission stated that an explanation should be added in the form of sub-section (3) to the following effect:-

“Nothing contained in sub-sections (1) and (2) to Section 24 shall apply to an acquisition proceedings initiated before the commencement of this Act, where the Govt. is prevented either from making the award or from taking possession of the land acquired due to an order passed by the court or proceedings pending therein.”

- The **Government of Uttar Pradesh** suggested keeping those cases out of the purview of the LARR Bill, 2011 where possession of the land has been taken under Section 17 of LA Act, 1894.
- The **Department of Atomic Energy** stated that the requirement of the Clause 24 may delay projects upto 3 years.
- The **Ministry of Urban Development** submitted:

“The proposed LARR Bill needs to be prospective, and with a specific savings clause that all action done under the existing LA Act should continue to be valid without any conditions. LARR Bill at clause 107 (2) refers to general application of clause 6 of General Clauses Act 1897 'save as otherwise provided in the Act', Under clause 24 (1) & (2) of LARR Bill, it has been provided that where a notification under clause (4) of the LA Act 1894 was Issued before the commencement of LARR Act but the award under clause 11 thereof had not been made before such commencements, the process shall be deemed to have lapsed and the appropriate Government shall initiate the process for acquisition of land afresh in accordance with LARR Act. Further, where possession of land has not been taken, regardless of whether the award under clause 11 has been made or not, the process for acquisition of land shall deem to have lapsed and the appropriate Government is required to initiate the process afresh.

It is felt that land acquisition proceedings once initiated under the old Act may be deemed to be allowed to be continued under the corresponding clauses of the LARR Bill instead of considering it as lapsed. The clauses 24(1) and 24(2) In particular will be detrimental for important infrastructure projects, and lead to deleterious time and cost escalation. Also the savings clause at para 107(2) should carry the saving clause that all action taken under the repealed LA Act will be deemed to have been carried out under the corresponding provisions of the LARR Act.”

- The **Ministry of Railways** submitted that wherever acquisition has been taken up by Railways for the existing projects under LA Act, - 1894, the proceedings should not lapse as proposed vide clause 24 in the draft LARR Bill, 2011. However, the provisions of LARR-2011 pertaining to the determination of compensation and rehabilitation and resettlement may be made applicable to the ongoing cases of land acquisition under the land Acquisition Act-1894, where notification under Section 4 has been issued but possession of land has not been made over by the land owners.

- During the evidence before the Committee the representatives of the **Ministry of Railways** suggested to let the proceedings of Land Acquisition go on till whatever stage they have been completed and beyond that the proceedings and compensation and R & R could be as per the new Act.
- Representatives of **Sangharsh** in their deposition before the Committee stated that if the award is pending in cases where land was acquired in accordance with the previous Act, this new Act should apply in such cases with retrospective effect.
- **Shramik Kranti Sangathan** in their evidence before the Committee also suggested application of the proposed legislation with retrospective effect.
- The representatives of **Federation of Indian Chambers of Commerce and Industry (FICCI)** in their evidence before the Committee submitted that Clause 24(1) will create a major sort of unsettlement whatever acquisition has been done and compensation paid and received by the beneficiary.

Explaining further FICCI submitted in a note:

"Land applied under the Land Acquisition Act, 1894 should not be covered under this Act as it will create litigation. In many cases, land has not been taken over or compensation has not been paid and possession is held up due to legal challenges by land owner. All such cases should not be held invalid and governed by new Act."

16.3 Other suggestions placed before the Committee were:-

- Development time lines for coal based power projects are longer, as it takes nearly two to three years to obtain all the clearances. Clause 24 threatens many power plants which are under various stages of land acquisition process. So, if a notification under Land Acquisition Act 1984 has been issued it should be deemed to have been undertaken under the LARR Bill, 2011. Benefits of compensation and rehabilitation can be extended as per the new Bill.

- In cases where possession of the land has been taken illegally and where complete award has not been made or the cases are pending in the court, the new Bill should apply retrospectively.
- The Act should be applied only from the date of coming into force and should not be applied retrospectively on acquisition already carried out.
- Retrospective effect with cutoff date may be fixed for its enforcement.
- Clause 24 (2) should be modified to the extent that in all the cases of land acquisition, where awards under Sec.11 have commenced should be continued to be acquired as per LA Act, 1894.
- Clause 24 should be amended and all cases where declaration under Section 6 of the Land Acquisition Act, 1894 has not been made, should be deemed to have lapsed and proceedings for land acquisition should start afresh under the new Bill.
- A cut-off date be given with retrospective effect in the Bill to include all cases in which award payment proceeding is pending either before the Collector and Court. In the absence of cut-off date others who got compensation based on earlier Act will start agitating.
- Saving and Repeal Clause 107 should be amended to the effect that all pending references before designated courts shall also be governed by the provisions of this Act”.

16.4 Response of the DoLR on the major issues:

- On the suggestion of the **Government of Madhya Pradesh** that the process of land acquisition should continue where substantial payment has been made under the Land Acquisition Act, of 1894 the DoLR stated that where award of the Collector has not been made or possession of the land has not been taken under the LA Act, 1894, the land acquisition proceedings shall lapse. In such cases the process of land acquisition shall start afresh under the new Bill. This provision is appropriate and should be retained as such.
- On the suggestion of the **Government of NCT of Delhi** to add a new sub-

clause so that the new Act shall not apply to cases where the award is pending because of Court order under the LA Act, 1894, the DoLR stated that it is not acceptable as this will conflict with the existing retrospective clause.

- To the suggestion of the **Government of Uttar Pradesh** that in cases where under section 17 of the LA Act, 1894 possession of the land has been taken should be kept out of the purview of the LARR Bill, 2011, the DoLR stated that as per Clause 24 of the Bill, in the cases where award of the Collector has not been declared or possession of land has not been taken as per the Land Acquisition Act, 1894, before the commencement of the LARR Bill, 2011 then the proceedings of land acquisition shall stand lapsed. The process of land acquisition in such cases will begin afresh under the LARR Bill 2011.
- The DoLR did not agree to the contention of the **Department of Atomic Energy** that the requirements of Clause 24(1) will delay the process of acquisition by at least 3 years.
- The DoLR did not accept the suggestion of the **Ministry of Urban Development** and the **Ministry of Railways** that the land acquisition proceedings once initiated under the old Act may be deemed to be allowed to be continued under the corresponding clauses of the LARR Bill, 2011 instead of considering it lapsed. The DoLR also did not accept the suggestion that if notification under Land Acquisition Act, 1894 has been issued should be deemed to have been undertaken under the LARR Bill, 2011.
- On the suggestion that this Bill should apply retrospectively to the cases where the award has been challenged in the Court and the decision is pending therein, the DoLR stated that if the award of the Collector has not been made or possession of the land has been taken as per the provisions of the LA Act, 1894 then such cases will lapse as per clause 24 of the Bill.
- To the suggestion that the new Act should not apply to cases where

acquisition of land has been applied under the old Act, the DoLR stated that Clause 24 of the Bill provides that where award of the Collector has not been made or possession of the land has not been taken under the LA Act, 1894, the land acquisition proceedings shall lapse. In such cases the process of land acquisition shall start afresh under the new Bill. This provision will ensure comprehensive land compensation and R&R package in the cases where land acquisition proceedings are still going on.

- On suggestion of amending the Clause 24 so as to exclude all cases where declaration under Section 6 of the Land Acquisition Act, 1894 has not been made, the DoLR stated that this will reduce the retrospective effect of the LARR Bill 2011 to a great extent. So, the provision in Clause 24 of the Bill is proposed to be retained as such.
- The DoLR did not accept the suggestion of amending the Clause 107.

RECOMMENDATION OF THE COMMITTEE

16.5 The Committee note that Clause 24 of the Bill provides that land acquisition cases/process shall be invalid on enactment of the new Act in cases where Collector has not given award or possession of the land has not been taken before the commencement of the proposed legislation. Some of the representatives of the industry and also the Ministries like Railways and Urban Development submitted before the Committee that land acquisition proceedings already initiated under the existing Land Acquisition, 1894 should not lapse as it would lead to time and cost over-run in many infrastructural projects. However, in such cases land compensation and R & R benefits could be allowed as per the provisions of LARR Bill. The Committee would like the Government to re-examine the issue and incorporate necessary provisions in the Rules to be framed under the new Act with a view to ensuring that the land owners/farmers/affected families get enhanced compensation and R & R package under the provisions of the LARR Bill, 2011 and at the same time, the pace of implementation of infrastructural projects is not adversely impacted.

XVII. REHABILITATION AND RESETTLEMENT ENTITLEMENTS

(The Second Schedule to the Bill)

17.1 The Second Schedule of the Bill provides for the element of Rehabilitation & Resettlement entitlement for all the affected families both land owners and the families whose livelihood is primarily dependent on land acquired in addition to the compensation package to be given to those whose land is acquired as per the First Schedule to the Bill. Clauses 30(1), 37(1) and the Clause 98(3) have been referred to in the Second Schedule.

17.2 Clause 30(1) states that “The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.”

17.3 Clause 37(1) states that “The Collector shall ensure that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 29:

Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award:

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands proposed to be so acquired.”

17.4 Clause 98(3) states that The Central Government may, by notification, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall

apply with such exceptions or modifications as may be specified in the notification, as the case may be.

17.5 Summary of the suggestions placed before the Committee:

- The **Government of Maharashtra** in their written note submitted that:
 - (i) The Government should give 50sq.mts. house, capitalized Net Present Value to generate Rs. 2000 per month should be deposited in Government Banks or Insurance company.
 - (ii) There is also no mention that whether cost has to be recovered while giving land against land or 20% developed land. Only if person loses entire holding and becomes land less, land for land should be applied.
- The **Government of Bihar** stated that they agree with the scheme of payments of compensation, monetary part of R&R benefits and the infrastructural entitlements as per Chapter- V of the Bill. They also suggested that the Requisitioning Body be required to deposit costs on R&R as well, besides other costs, at the time of filing the requisition for land acquisition itself.
- The **Ministry of Panchayati Raj** in their submission stated that in case of the R&R award, a provision may be made that ex-gratia amounts should be reviewed every five years by a committee, so that these keep up with inflation.
- The **Ministry of Power** in their submission to the Committee suggested to delete the word 'mandatory' from the entry 3(a) of the Second Schedule and provision for "employment" should also include gainful engagement opportunities through associate agencies as also work through contracts and cooperative societies, etc.
- The **Ministry of Urban Development** in their written note stated as under:

“The Second Schedule of the LARR Bill states that in case of displacement, allotment of houses need to be made for the displaced persons to the extent of 50 sq.mts. of plinth area in urban

areas. Keeping in view of shortage of land in the Metropolitan Cities like Delhi where there is no scheme for allotment of plots even in the earlier scheme released in the year 1981, such a requirement is not practical. In the experience of DDA, they are unable to allot the plots measuring even 26, 32 or 40 sq.mts in Delhi. Therefore, it is felt that one size of compensation by way of allotment of plot/house cannot fit all, and it would not be feasible to allot flat/plot measuring 50 sq.mts in all cases. Therefore, the Bill should provide for flexibility so that the entitlement to allotment could be co-related with the area of land/house acquired in urban areas and allotment of land need not be made mandatory.

Also, allotment of a minimum of one acre of land in the command area of the project for which the land is acquired may need reconsideration. There may be contingencies that the land holding of some families could be less than one acre. This provision will imply that the status of being treated as 'landless' due to the project for such families whose initial land holding was less than one acre would be disproportionately more than the land holding that is lost due to acquisition.

Clause 30(2) of LARR Bill does not provide for adequate rehabilitation for commercial, industrial or institutional structure's which is very important for urban areas. Entitlement in case of affected shops/commercial/ institutional establishments in proportion to the area acquired should be made part of tile R&R package and specifically included in the clause 30(2)."

- The **Ministry of Coal** stated that mandatory employment may be restricted to the number of vacancies/requirement of the coal companies, which may be matched with the suitability of the candidates available from amongst the affected families. Those affected persons, who cannot be provided employment may be given one time compensation/annuity in proportion to their land area, provided that persons having land below one hectare of irrigated land or two hectare of un-irrigated land, shall not be considered for mandatory employment and will only be entitled for one time compensation/annuity in proportion to their land areas.

Further regarding Clause 30(2)(c), it was stated that compensation for land acquisition includes cost of building to be acquired, as such instead of providing built house; there should be provision for grant of land for house only.

- The **Ministry of Petroleum & Natural Gas** in their written note stated as under:

"(i) In case the number of persons requiring employment exceeds the number of vacancies available, how would the employment be provided to some PAPs in preference over others? In case preference is given based on the size of land acquired OR on some criteria related to poverty / deprivation OR the ability of the family to seek alternate means of livelihood; the same needs to be spelt out.

(ii) It has been stated under 3 (a) of the Second Schedule, that employment is to be provided in the project or in such other projects as may be required. For typical oil companies which have a pan-India presence, there is possibility of employment being offered at installations other than the project site from where the person has been displaced. It is also possible that some PAPs could be provided employment at the project site and the remaining at alternate locations of the land acquiring company. The criteria upon which such segregation would be done needs to be spelt out so that implementation takes place in a transparent manner. Unless the criteria is frozen any action by the acquiring company could be viewed with suspicion, leading to unrest and consequential delay in implementation of the project."

- The representatives of the **Ministry of Power** in their evidence before the Committee submitted that Transmission Projects that are set up do not really create as many jobs as probably the number of people who will get affected. So, providing mandatory employment may be difficult.
- The **Ministry of Environment & Forests** suggested that while fixing the requirement of land for relief and rehabilitation of the affected people, reasonable care should be taken to determine the adequacy of extent of area factoring in the requirement of essential infrastructure and civic amenities to avoid congestion and heavy load on basic infrastructure in order to ensure that the people get a reasonable dignified living. Necessary steps should be taken to prevent environmental degradation and creation of situation similar to 'slums' due to high load on infrastructure. If possible the housing facilities for rehabilitation should be constructed in a planned manner by the project proponent or the appropriate agency at the cost

realized from the project proponent with all essential amenities like transport, sanitation, health and education etc. as well as adequate opportunities for livelihood so that affected people are not disadvantaged.

- The **Delhi Metro Rail Corporation** in their note submitted that the rehabilitation provision of Rs 25,000/- provided for commercial, industrial or institutional structure does not serve the purpose of Rehabilitation. Entitlement of shops / commercial, institutional establishments should be in proportion to the area acquired. R & R package for residential units does not differentiate between area of land acquired, it should be in proportion to the area acquired. Minimum built up area prescribed for residential unit in rural area is very large, it should not be more than 50 sqm and for urban area it should not be more than 25 sqm. Rehabilitation and Resettlement provisions should be applicable for needy and deserving people who lose their entire livelihood on account of compulsory nature of land acquisition, but it should not be provided to rich and mighty persons who owns number of houses, commercial shops/establishment or vast land other than the acquired properties and they should be eligible only for compensation.
- The **Government of Chhattisgarh** have submitted that In Section - 37(3), it is mentioned that land will not be transferred and given possession until sub section (1) and (2) are fulfilled i.e. completion of R & R plan. Completing R&R fully in many projects will take a long time particularly in cases where both agricultural land area and residential areas are involved. Sub section (2) of section 37 makes Collector responsible for ensuring that the rehabilitation and resettlement process is completed in all aspects. It is strongly felt that after this sub section, again mention of sub section (3) is absolutely repetition, hence, not necessary.
- The representatives of the **Government of Chhattisgarh** who appeared before the Committee to tender their evidence also submitted that giving

land for land will not be useful and moreover we cannot acquire land in command area because again some people will be displaced. Illustrating their submission they stated that if you acquire land to give to the displaced, again you will acquire land from somebody else, he will get benefit in the R&R Policy and it becomes a cycle, so land for land is not a very practical solution. They also stated that whenever giving land for land is not possible, if one is not a tribal compensate him by cost of land equivalent to the market price. They further, stated that if a tribal is given land in some other area he will not be comfortable there and suggested that employment be given to the tribal which will be useful to the tribal even if the acquirer of the land generates employment anywhere else in the country.

- The **Government of Madhya Pradesh** stated that linking transfer of land to completion of R & R is not practical. As to when R & R is complete is not stipulated in the draft Bill. They further, added that it has been upheld by Supreme Court that R&R has to be *pari passu*, and not a priori.
- The representatives of the **Government of Madhya Pradesh** deposing before the Committee also submitted that the provision of land for land should not be made compulsory; an option of cash compensation should also be there.
- The **Ministry of Power** were of the view that the entire process should be compressed to one year as envisaged in the earlier drafts. Land Acquisition and SIA/R&R process could go simultaneously.
- The **Delhi Metro Rail Corporation** suggested that Collector shall be allowed to take possession of land after issue of award for compensation and R & R, making payment of compensation for land as well as properties and monetary R& R measures, but before actual completion of Resettlement, which will require long time. In the intervening period additional monetary compensation towards rentals can be paid to affected families.

- The representatives of '**Sangharsh**' deposing before the Committee submitted that there should be a provision of giving mandatory employment in those projects which generate employment and annuity should be ten thousand rupees per family instead of two thousand rupees and the annuity should be linked with the Consumer Price Index (CPI).
- The representatives of **CREDAI** submitted that the provisions of the Second Schedule are lop sided and cannot be imposed on private companies. Further, commenting on the provision of 'Land for Land' they stated that providing land for land in command area is not feasible.
- Tendering the evidence before the Committee the representative of **PRS Legislative Research**, suggested that there should be some provision in the case of a company going bankrupt in which a displaced person was employed.
- Depositing before the Committee the representatives of **FICCI** submitted that R&R can be capped at the value of 30% or 40% of the total market value of the land and that can be deposited by the industry or whichever is buying the land, with the Government and let the Government decide how they would address the R&R issues.
- **Adivasi Adhikar Manch**, tendering their evidence before the Committee submitted that equivalent land should be given under the provision of land for land, R&R should precede displacement. Further, they added that in the column 4 of the Second Schedule there should be a provision to stop the acquisition process till everything in the Second Schedule is provided. They also suggested that the word 'involuntary displacement' appearing in the entry 11 of the Second Schedule which deals with special provisions for SCs and STs, needs a rethink because some of the benefits are tied to involuntary displacement only.

17.6 Other suggestions received were:

- A person must be assured of a minimum income equivalent to what he was earning prior to acquisition.
- Land for land: land must be provided in every case, not only in irrigation projects. Further, the provision for reservation of 20% developed land is flawed and inadequate.
- In Schedule II pr. 2 the first proviso may be substituted by:

"Provided that in every project, the Schedules Tribes losing land shall be granted either an equivalent of the land acquired or 5 (five) acres, whichever is lower; also landless Schedules Tribes displaced by the project must be given at least one acre of land."
- In Schedule II pr. 3
 - (i) Clause (a) for the words "one member per affected family" substitute "all adult members of the affected family."
 - (ii) Clause (b) for the words "affected family" substitute "every adult person per affected family"
 - (iii) Clause (c) for the words "per family" substitute "every adult person per affected family"
- In Schedule II pr. 4 in the second paragraph, for the words "fifty thousand rupees" substitute the words "five lakh rupees".
- In Schedule II pr. 11
 - (i) Clause (2) for the words "five years" substitute "six months"
 - (ii) Clause (3) add: "Provided that in each case the consent of the Gram Sabhas or the Councils as the case may be, is necessary"
 - (iii) Clause (7) for the words "twenty five percent" substitute "hundred percent"
 - (iv) Clause (10) for the words "twenty five percent" substitute "hundred percent"
- Para 2 of Schedule II is the provision detailing 'land for land'. no off set against monetary compensation must be allowed and no price for the 20% land offered should be charged.

- Schedule II must be precluded from ambit of Clause 99.
- One job for every five persons in the family. If there are more than five persons in the family, then two jobs must be given.
- For industrial purposes, 5% of jobs should be reserved for people residing within 20 Kms.
- Permanent job by the Company with the minimum of Rs.10,000 for 40 years as compensation.
- Bill should incorporate a provision prohibiting multiple displacements.
- Provision of residential houses in case of displacement and land for land is not practical. Subsistence Allowance for 12 months and annuity for 20 years will destroy the construction sector.
- For the affected persons Class IV jobs should be reserved in the Government.
- Affected persons should be provided proper compensation, i.e. for 5 acre land, Rs. 30 lakhs should be deposited in their bank account
- In Second Schedule, for approved tourist projects onetime payment of Rs.10 lacs should be given to the affected families.
- In Schedule 2 in Land for Land 20% should be reduced to 10%.
- Youth between 18-35 years should be trained and 50% jobs of Class-III and Class-IV should be reserved for such persons.
- In Second Schedule column (3), sub clause (2) after the words constructed house, add “which shall not be less than Rs.1.00 lakh.
- In Second Schedule Sl.No.7 the grant to artisans should be Rs.50,000/- instead of Rs.25,000.
- In Sl. No.8 put the Present Para in column (3) as (1), and add ‘(2) In case of eviction of fishermen from the coastal area, the affected families may be given another suitable coastal land for their fishing activities at a place near their rehabilitated housing units.’

- At Sl. No. 4 subsistence grant for families should be for two years instead of one year and the SC and ST families should receive Rs.1.00 lakh instead of Rs.50,000/-
- In Sl. No. 3 Rs.10.00 lakh should be given instead of Rs.5.00 lakh. The annuity policy should provide Rs.4000/- instead of Rs.2000/-
- Vulnerable affected persons should be added at Sl.No.11 and they should be provided with pension of Rs.2000.
- For acquiring land from SCs/STs they should be given equal agricultural land, removing the limit of 2.5 acres of land.
- Compensation of one acre of land as provided in Second Schedule is inadequate.
- For R&R under urban projects, the rehabilitation package of the Bangalore Metro Rail Project should be taken into consideration.
- In the R&R package for the affected families the prioritization of water for (a) drinking, (b) agriculture and (c) industry needs to be ascertained
- The National Resettlement & Rehabilitation Committee should be set up to address the R&R claims of affected communities of ongoing projects. It should also ensure proper rehabilitation of affected communities affected due to land acquisition since independence.
- In the Second Schedule the time period for the job needs to be specified to prevent its mis-utilization.
- In Schedule II, the size of the plot for house should be 600 sq. mts. in rural areas and 200 sq. mts. in the urban areas.
- Annuity policies should provide the pay per day rate as declared by the labour commissioner govt. of India instead of Rs. 2000.

- R&R benefits should also be provided to the affected persons who got dislocated from their place of residence by reasons other than acquisition which may occur due to calamities, natural vagaries, war etc.
- Pension of the farmers whose land has been acquired should be paid Rs. 15,000 per month instead of Rs. 2000 subject to revision based on price index.
- As per the proposed Bill a suitable employment to the family members of the farmers concerned has been offered. As an alternative lump sum has been proposed Rs. 5/- lakh is less. It should be fixed at least Rs. 25/- lakh to 30/- lakh subject to revision based on price index.
- The provisions for SC/ST are complicated. SC/ST families should get 25% higher benefits as compared to others.
- Provision of RR benefits should not be applicable to private parties acquiring land.
- Land acquired from ST: The quantum of land to be transferred in lieu of land acquired from Schedule Tribes is not specified. Further, in case of Arunachal Pradesh as well as in Himachal Pradesh in Pange Valley and Lahaul & Spiti district, all the families comes under ST category providing land for land becomes cumbersome and project may become unviable.
- Provision for payment of Annuity in lieu of employment has been made (Sl.No. 3(c)of the Second Schedule) per affected family regardless of area of land the family loses. Annuity in all fairness should have some linkage with area of land (per acre) acquired from the land owner family.
- A special monitoring committee consisting of the tribals shall be set up to oversee land acquisition in the tribal areas of the Fifth and Sixth Scheduled Areas.

- In all industrial enterprises set up in the Fifth and Sixth Schedule Areas, the “community” in the areas shall be deemed to be the owner with 50% share in its favour by virtue of its allowing the industry to use local resources. Profits will also be shared accordingly.
- The provision relating to allotment of 2.5 acre of lands to Scheduled Tribes in the Second Schedule should be changed to 5 acres.
- Every affected family of Scheduled Tribes which is land less shall be given at least one acre of land.
- The provisions related to subsistence allowance shall be extended to all the adult members of the affected families.
- Provisions relating to the entitlements such as transportation cost should be extended to all the adult persons of the family.
- Compensation in lieu of mandatory employment should be extended to Rs.10 Lakh.
- In Second Schedule the amount payable for one time resettlement allowance should be Rs.5.00 lakhs instead of Rs.50,000/-.
- In Second Schedule the provision relating to development of alternative fuel, fodder and timber forest resources on non-forest land should be affected within a period of one year instead of five years.
- The additional compensation to affected families of the STs when resettled out of district, should be paid hundred percent higher instead of 25 percent higher.
- Clause 30 (1) Relief and rehabilitation should be provided for the entire community under the zone of influence.

- Clause 30 (2) Subsistence allowance should be 30,000/- per month for 12 months and Rs. 20,000/- per acre for 33 years.
- “Rehabilitation first shifting afterwards” should be included as a separate section in an appropriate chapter to highlight this principle.
- Provision of cultivable land in place of acquired land
- The provision of taking over land after payment of compensation in RR benefits will make the acquisition very costly.
- In the border areas the “affected families” in the lands that are used for defence purposes like shooting ranges, laying of mines etc. must also be entitled to the rehabilitations & resettlement benefits Clause 37 of the Bill should be amended to this effect.

17.7 Response of the DoLR on the major issues:

- On the suggestion of the **Government of Maharashtra**, for land for land and the cost to be recovered while giving 20% of the developed land, the DoLR stated that Schedule-II of the Bill provides that land for land will be provided in case of the irrigation projects, if the affected family as a consequence of acquisition of land has been reduced to the status of a marginal farmer or landless. If any affected family wished to avail of the offer of land for land including the offer of 20% of the developed land then an equivalent amount will be deducted from the land compensation package payable. Rest of the suggestions were not acceptable.
- On the suggestion of the **Government of Bihar** that the Requisitioning Body should be required to deposit costs on R&R as well, besides other costs, at the time of filing the requisition itself, the DoLR stated that the Requisitioning body will be able to deposit the costs on R&R only after the preparation of the R&R schemes under the Bill.

- On the issue of the provision of revision of ex-gratia amounts every five years by a committee suggested by the **MoPR**, the DoLR stated that in the Second Schedule of the Bill, wherever specific amounts have been mentioned may be indexed to the Consumer Price Index.
- On the issue of option of gainful employment through other agencies and deletion of word '**mandatory**' suggested by the Ministry of Power, the DoLR stated that the word 'mandatory' is not required, as provision of employment has three options (employment, Rs.5 lakh financial grant and annuity) already given in the Schedule.
- The suggestions of the **Ministry of Urban Development** have been responded by the DoLR as under:
 - (i) House in urban area may be provided in the multi storey buildings considering the space constraint.
 - (ii) Regarding provision of minimum one acre land in Command area the DoLR stated that for ensuring sustainable livelihood it is essential.
- Regarding adequate rehabilitation for commercial, industrial or institutional structures, the DoLR stated that Clause 27 of the Bill already provides that Collector shall calculate the total amount of compensation by including all assets attached to the land.
- On the suggestion to restrict the mandatory employment to the number of vacancies and matching it with the suitability of the candidates and instead of providing built houses there should be provision for land for house only of the **Ministry of Coal**, the DoLR stated that the Bill already provides for jobs/annuity policy/lump sum payment to the affected families in Schedule II of the Bill, rest of the suggestion were not accepted by the DoLR.

- On the suggestion of the **Ministry of Environment and Forests** that necessary steps should be taken to prevent environmental degradation and creation of situation similar to 'slums' due to high load on infrastructure while giving R&R entitlement, the DoLR stated that Clause 17 of the Bill provides for preparation of R&R scheme or plan by the Administrator. The concerns raised in the suggestion will be taken care of during preparation of the aforesaid R&R scheme.
- On the issue raised by the **DMRC** that entitlement in case of affected shops / commercial, institutional establishments, in proportion to the area acquired, should be made part of the R & R package and decreasing the area of houses to be allotted, the DoLR stated that Compensation for the acquisition of the shops/commercial/institutional establishments will be calculated as per the provisions of Clauses 26-29 of the Bill. The entitlements mentioned in the R&R provisions are over and above these compensations. The limits of plinth area prescribed in Second Schedule of the Bill are appropriate and should be retained as such.
- On suggestions of the **Government of Chhattisgarh** that Clause 37(3) is repetitive the DoLR clarified that Clause 37 (3) provides for taking over the possession of the land acquired by the Collector after fulfilling the requirements of Clause 37 (1) & (2).
- In response to the suggestion of the **Government of Madhya Pradesh** that R&R has to be *pari passu* the DoLR stated that Clause 37(1) should be deleted and instead a proviso should be added to the extent that 'such time limits for providing R&R infrastructure would be dealt by State specific rules to be prescribed.'
- To the suggestion of the **Ministry of Power** to compress the entire process of acquisition and R&R into one year, the DoLR stated that one year is too short a period for completing SIA, land acquisition and R&R process.

- To the suggestion made by **DMRC** that the Collector should be allowed to take possession of land after issue of award for compensation and R & R, making payment of compensation for land as well as properties and monetary R& R measures, but before actual completion of Resettlement, and payment of additional monetary compensation towards rentals to affected families, the DoLR stated that the two provisions of clause 37(1) should be deleted and instead a proviso should be added to the extent that 'such time limits for providing R&R infrastructure would be dealt by State specific rules to be prescribed.'
- To a suggestion that the Bill should prohibit multiple displacement the DoLR stated that though it is desirable, it will not be practicable to include the same in the law. However compensation may be doubled in such cases.
- On the issue of training youth between 18-35 years and reservation of 50 percent Class III and Class IV jobs to the affected persons the DoLR stated that the training and skill development aspects need to be included.
- To a suggestion that In case of eviction of fishermen from the coastal area, the affected families may be given another suitable coastal land for their fishing activities at a place near their rehabilitated housing units, the DoLR stated that the Rules to be framed under the Act may provide details in this regard.
- On the suggestion that the time period for the job needs to be specified to prevent its mis-utilization the DoLR stated that the Rules to be prepared under the Bill may take care of this concern.
- To a suggestion that R&R benefits should also be provided to the affected persons who got dislocated from their place of residence by reasons other than acquisition which may occur due to calamities, natural vagaries, war etc. the DoLR stated that a separate Bill for such affected families may be considered.

- To a suggestion that in Second Schedule the provision relating to development of alternative fuel, fodder and timber forest resources on non-forest land should be affected within a period of one year instead of five years the DoLR stated that it is not possible to develop alternative fuel, fodder and timber forest resources within a period of one year instead of five years.
- On the issue of deletion of the offer of twenty per cent of the developed land to the land owning project affected families in the case of urbanization projects and payment of five lacs should be reduced to two lacs, the DoLR stated the offer of twenty per cent. of the developed land will enable the land owners to be a part of the development process. So, the provision should be retained as such. The one-time payment of Rs. 5 lacs proposed in the Bill is appropriate and should be retained as such.
- On the apprehension that the institutional structure proposed in the Bill is weak, the DoLR stated that suitable institutional arrangements have been put in place in the Bill to ensure that a transparent and participative process are followed in land acquisition and rehabilitation and resettlement processes Clause 17 of the Bill provides for preparation of R&R schemes by the Administrator. Further, Clause 39 of the Bill provides for execution and monitoring of the R&R schemes by the Administrator.
- On the issue of giving 5 acre of land and house sites of 1000 sqm. in rural areas and 500 sqm. in urban areas the DoLR stated In view of the scarcity of the land, the provision given is sufficient and should be retained as such
- On the suggestion that relief and rehabilitation should be provided for the entire community under the zone of influence, the DoLR stated all the 'affected families' as defined in the Bill will be provided relief and rehabilitation

- The DoLR did not agree to the suggestion of increasing subsistence allowance to Rs. 30,000/- per month for 12 months and Rs. 20,000/- per acre for 33 years.
- The DoLR did not agree to a suggestion that there should be a limit of 5% of the project cost on rehabilitation and resettlement.
- Rest of the suggestions did not find favour of the DoLR.

RECOMMENDATIONS OF THE COMMITTEE

17.8 The Committee note that the Second Schedule to the Bill provides 12 elements of rehabilitation and resettlement entitlements for all the affected families (both land owners and the families whose livelihood is primarily dependent on land acquired). The Committee have been informed that out of these 12 elements the eligibility will be decided in case to case basis. The Committee find that the note below the Schedule reads ' in case any element of rehabilitation and resettlement package is not provided, the same should be indicated as "NIL" under column (4) and reasons therefore to be given' is not necessary as the resettlement package will be decided by the authorities and not by requiring bodies.

17.9 In their submissions before the Committee, various organisations, individuals have submitted that the present financial entitlements like one time payment of Rs. 5 lakh per affected family in lieu of employment, Rs. 2000 per month per family for 20 years, subsistence grant for a period of one year at the rate of Rs.3000 per month, one time financial assistance of Rs. 25,000 to artisans, one time transport allowance at the rate of Rs. 50,000, etc. are low and should be raised. The Committee find that some of the land acquisition packages prevalent as of now in some of the States have better compensation vis-à-vis those mentioned in Schedule II. The Committee, therefore, would like the Government to re-examine all the monetary components so as to bring it at par with the

amounts being given at present in some of the States. There should also be specific provision to link all the amounts to Consumer Price Index so that these are upgraded automatically. This periodical increase would not be subject to legislative approval.

17.10 On the issue of multi-displacement, the DoLR has agreed for double compensation in such cases but the Committee would like the Government to make a provision that a family once displaced will not be displaced again except in exceptional cases.

17.11 The Committee find that from the list of elements of R&R entitlements in Second Schedule at item No.2 under 'Land for Land' in 2nd proviso that while dealing with the irrigation projects, provisions have been made in urbanization projects to give 20% of the developed land to the land owning project affected families, in proportion to the area of their land acquired and at a price equal to cost of acquisition and the cost of development. The Committee feel that this should be figured as a separate entry as it doesn't flow from the given provision which is for the irrigation projects.

17.12 The Committee also note that under Entry 11 of the Second Schedule special provisions for SCs/STs have been mentioned. These not only relate to entitlement of R&R, but also to procedure/restrictions for acquisition. The Committee recommend that the provisions in this regard should be reflected in the main part of the Bill instead of the Schedule.

XVIII. INFRASTRUCTURAL FACILITIES/ BASIC AMENITIES FOR RESETTLED POPULATION

(The Third Schedule)

18.1 Third Schedule of the Bill lists 25 infrastructural facilities and basic minimum amenities which are to be provided at the cost of Requisitioning Authority to ensure that the resettled population in the new village or colony can secure for themselves a reasonable standard of community life and can attempt to minimise the trauma involved in displacement. The relevant clauses of the Bill are as under:

31. (1) Every displaced family shall be resettled in a resettlement area.

(2) In every resettlement area referred to in sub-section (1), the Collector shall ensure the provision of all infrastructural and basic amenities specified in the Third Schedule.

xxx

xxx

xxx

37. (1) The Collector shall ensure that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 29:

Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award:

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands proposed to be so acquired.

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(3) The Central Government may, by notification, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications as may be specified in the notification, as the case may be.

18.2 Summary of the suggestions placed before the Committee:

- The representatives of Confederation of Real Estate Developers of India (CREDAI) in their submission before the Committee stated that the amenities listed in the Third Schedule are impossible to be provided independently and such provisions unequivocally fetters the fundamental right enshrined in the Article 19(1)(g) of the Constitution.
- Former Secretary DoLR, (Smt. Rita Sinha) deposing before the Committee submitted that eighteen months time period is too short to complete all that is mentioned in the Third Schedule.
- While submitting their views before the Committee in their evidence the representatives of Akhil Bhartiya Vanvasi Kalyan Ashram stated that all the 25 amenities listed should be compulsory.
- The Secretary, **Ministry of Tribal Affairs** deposing before the Committee submitted that the word 'livelihood' at entry 23 should be dropped as it makes this provision restrictive.
- The **Ministry of Environment & Forest** in their written note suggested to insert a new provision in the Third Schedule as "Infrastructure for improvement of Environment" and that should include waste water treatment facility, sewage treatment, landfill sites and affluent treatment plants and creation of green belts, parks and gardens.

18.3 Other suggestions received were:

- Providing all the facilities at one place to the farmers when they are awarded rehabilitation and resettlement benefits.
- Community-cum-marriage hall with open space and outdoor arrangement and vegetable and milk booth and shopping complex.

18.4 Response of the DoLR on the major issues:

- On the suggestion that all facilities should be provided at one place to the displaced the DoLR stated that Schedule III of the Bill enlists the infrastructural facilities which will be provided at the rehabilitation site.
- The DoLR did not agree to the suggestion of including marriage hall, vegetable and milk booth and shopping complex in the third Schedule.

RECOMMENDATION OF THE COMMITTEE

18.5 The Committee note that Third Schedule to the Bill list 25 infrastructural facilities and basic minimum amenities which are to be provided at the cost of the requisitioning authority to the resettled population so that the resettled population can acquire for themselves a reasonable standard of community life and can attempt to minimize the trauma involved in displacement. From the other provisions of the Bill it has been made clear that the Collector in each case will decide the quantum and the entitlements out of the list. Some of the organizations have submitted before the Committee that all the 25 amenities may be provided in all the projects. However, the Committee feel that considering the size and quantum, it would be appropriate to decide it in case to case basis. The Committee also feel that for some of the facilities like primary health centres, schools, anganwaries, etc., a good amount of planning and technical know-how is required. The Committee, accordingly, recommend that there should be provisions in the Bill so that the Appropriate Government can assign these works to the expert Government Agencies.

NEW DELHI;
16 May, 2012
26 Vaisakha, 1934 (Saka)

SUMITRA MAHAJAN
Chairperson,
Standing Committee on Rural Development

Modal Activity Map

Broad category of function	Specific activity							
		Ministry of Environment and Forests, Government of India	State Government	DPCs	Panchayati Raj Institutions			Gram Sabha
					District Panchayat	Intermediate Panchayat	Village Panchayat	
Setting of Policies/Design Standards	National norms for acquisition							
	Preparation of State Norms							
	Developing norms for benefit sharing							
Planning	Land acquisition plan for local government areas							
	Land acquisition plan within the District Plan							
	Awareness creation and dissemination of information							
	Identification of land				Land pertaining to more than one Int Panchayat	Land pertaining to more than one village	Within a village	

Process of acquisition	Identification, surveying and measurement of land							
	Issue of preliminary notification for aqn				Land pertaining to more than one Int Panchayat	Land pertaining to more than one village	Within a village	
	Conduct of public hearings (Gram Sabhas)							
	Appeals and revisions							
	Issue of final notification				Land pertaining to more than one Int Panchayat	Land pertaining to more than one village	Within a village	
	Designing benefit sharing framework							
	Reporting							
Monitoring and Evaluation	Display of Information							
	Social audit Gram Sabha							
	Independent evaluation							
	Studies							