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The need for a modern, transparent and humane land law in India is being debated since the introduction of the Special Economic Zones (SEZ) Act in August 2005. Building SEZs requires large tracts of contiguous unoccupied land, which states in India are procuring for private developers by employing the LAA of 1894. The LAA has been used by the Central and state Governments for decades for procuring private land. This century old instrument of eminent domain became the subject of intense controversy as acquisition of land for building SEZs generated widespread protests (Palit and Bhattacharjee, 2008) and occasional bloody conflicts between state agencies and disgruntled landowners³.

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³ The worst example of violent conflict over acquisition is the Nandigram village in East Midnapur district of the state of West Bengal. The state Government’s plan to acquire 10,000 acres of land in the village in March 2007 for building a SEZ led to violent clashes between the police and locals killing at



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Beginning from 2007, the incumbent United Progressive Alliance (UPA) Government led by the Congress party, set about amending the LAA with the objective of making land acquisition a more fair and transparent process. The LAA (Amendment) Bill, 2007, which was passed by the Lok Sabha (Lower House of the Indian Parliament) in February 2009, lapsed because of the dissolution of the Lok Sabha for fresh elections. Similar was the fate of the Resettlement & Rehabilitation (R & R) Bill, 2007, which addressed R&R of people displaced by acquisitions. In its second tenure, the UPA Government sought to combine land acquisition and R&R into a single overarching legal framework. Accordingly the LARR Bill of 2011 was introduced in the Lok Sabha in September 2011 for replacing the LAA of 1894. It was referred for further examination to the Parliamentary Standing Committee on Rural Development, which submitted its findings to the Lok Sabha in May 2012. The Bill is currently being examined by a Group of Ministers (GoM) for re-introduction in the Parliament in a revised form. This is turning out to be difficult given the serious differences within the Government over the specification of the state's role in acquiring land for industry, and the implications of the eventual legislation on different stakeholders including farmers, tribal groups, businesses and last, but not the least, political parties.

The introduction of the LARR Bill in Parliament was preceded by the National Advisory Council (NAC)'s recommendations on a model land act integrating acquisition and R&R. Headed by Mrs Sonia Gandhi (also the chair of the UPA and the president of the Congress party), the NAC includes a diverse array of distinguished professionals from various segments of the civil society and provides policy and legislative directions to the Government, particularly on social policies and rights of disadvantaged groups⁴. It has been playing a critical role in the formulation of legislations inspired by the rights-based approach to development including the food security bill, the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) empowerment of minorities and integrated child development services (ICDS). The induction of the rights-based approach in India's economic policies is considered essential given the country's quest for inclusive growth.

This paper examines the LARR Bill of 2011 for determining whether it marks an improvement over the LAA of 1894 by paying adequate heed to rights and concerns of property owners. It examines the conceptual illustration of 'public purpose', which enables Governments to acquire private property on the grounds of such acquisition serving public interest, and passing on the land to industry for commercial development. In this regard, it also compares the provisions of the Bill with those in the LAA

least 14 people. The incident was the first in a series of violent encounters involving the police, locals and cadres from the ruling and opposition parties that lasted for almost than two years.

⁴ 'Vision' National Advisory Council (NAC), Government of India (Prime Minister's Office); <http://nac.nic.in/> Accessed on 21 March 2012

(Amendment) Bill of 2009, and the NAC's recommendations, for identifying similarities and differences. It concludes by examining whether the mode of acquisition proposed in the new Bill is consistent with the principles of a rights-based approach.

LAA of 1894: From Public to Private

The complexities associated with acquisition of land in India have accumulated over time with most of the complications having their roots in India's colonial history. The first historical instance of legislation for acquiring land was probably the Bengal Regulation Act (I) of 1824, which sought to consolidate colonial commercial interests by freeing up land for salt pans and other purposes (Ray and Patra 2009, Advani 2009). The legislation of 1857 extended the writ of the acquisition beyond the province of Bengal to the whole of undivided 'British' India. The LAA of 1894, which replaced all other legislations to become the overarching legal instrument for expropriating land, affirmed the eminent domain of the state for acquiring land in 'public purpose'. Independent India allowed the LAA to survive with various amendments effected from time to time⁵. None of these, however, aimed to replace the Act, unlike the LARR Bill of 2011. In this sense, the latter has a more fundamental objective than the earlier LAA (Amendment) Bill, which was another attempt to modify the LAA without repealing it⁶.

Acquisition is a forcible process involving involuntary acquirement of land from unwilling owners. The LAA justifies the state's exercise of eminent domain and forcible acquisition on the grounds that the acquired land will be developed by the state for providing public goods and services. The Act has been primarily used for making land available to the Government at minimum price. During the colonial era, it was sanctified by allowing for due processes and portraying acquisition as a market-based transaction, where original owners were deemed sellers and paid (compensated) the prevailing market value of the property. An important point to note though is in its original form the LAA did not provide for acquisition of land by the state for private agencies. This was introduced in the amendment of 1962 by justifying acquisition for private companies if they were engaged in activities deemed as public purpose or work which is 'likely to prove useful to the public'⁷. This paved the ground for exhaustive

⁵ Article 372 of the Indian Constitution allowed all colonial acts to remain in force unless repealed by the Parliament. The LAA continues till today with amendments. The major amendments were effected in 1962, 1967 and 1984.

⁶ The LARR Bill of 2011 '.....provides for repealing and replacing the Land Acquisition Act, 1894'. See *The Land Acquisition, Rehabilitation and Resettlement Bill, 2011*, (Bill no 77 of 2011), as introduced in the Lok Sabha; 'Statement of Object and Reasons', Paragraph 5, Page 44.

⁷ Section 40(1)[aa] and 40(1)[b] of the LAA Act of 1894, following amendments introduced in 1962, read as '...acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose' (40(1)[aa])



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use of the Act by Central and state Governments for acquiring land. The state's exercise of eminent domain and for supplying land to private industry could continue unhindered due to the ambiguous illustration of 'public purpose' in the LAA. The ambiguity has helped in acquiring lands for purely commercial ventures such as real estate development.

For Industry, or not for Industry

As mentioned earlier, the LARR Bill was preceded by the NAC's recommendations on a model land law. The definition of public purpose is the only issue on which the members of the Working Group of the NAC could not reach a consensus. The differences arose over whether Government should (or not) acquire land for industry and whether the definition of public purpose in the model law should (or not) include a supporting provision to that effect⁸.

The divergence of opinion within the Working Group symbolises differences in posturing over the Government's role in acquisition. Those in favour of Government doing so argue that arm's length transactions between industry and land owners are likely to be inefficient. Imperfections, particularly large information asymmetries between the two groups (Bardhan 2009), prevent land markets in India from clearing at mutually satisfactory prices. Land owners are more likely to be at the receiving end in most such transactions, particularly the small, unorganised and economically marginal ones, whose bargaining abilities are insignificant compared with industry. Thus the state needs to play a well-defined role for reducing transaction costs, protecting the weak and securing compensation for the unwilling (Ghatak and Ghosh, 2011).

The alternate view to the state playing the role of an active facilitator is its absence from all transactions between industry and private property owners and limiting its presence to instances where the land would be used for producing public goods for the community in a manner that future welfare gains exceed the costs of acquisition from the community's perspective. While the former view is occasionally criticised for enabling governments to become over-zealous in acquisition and abetting purely commercial activities, the more 'hands off' role, is also criticised on the grounds that existing imperfections in India's land markets – not only in information asymmetry between buyers and sellers, but also other fundamental flaws such as ambiguous title

and 'such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public' (40(1)[b]).

⁸ The three member Working Group was split between one member (N.C. Saxena) and two members (Harsh Mander and Aruna Roy) respectively on the issue. 'Proposals of Working Group for Consideration of NAC-II: Suggestions for Land Acquisition Amendment Bill (2009) & Resettlement & Rehabilitation Bill, 2009'. See http://nac.nic.in/pdf/working_group_proposal_for_larr.pdf Accessed on 17 March 2012.

rights, improperly maintained land records, and most importantly, a weak legal right to private property – are likely to make land transactions inefficient without a facilitating role by the Government .

Demystifying ‘Public Purpose’

Globally, public purpose, like in India, is often ambiguously described. There are some countries where it is relatively clearly stated as in the Expropriations Law of Mexico, or the Land Administration Law of China (Parker and Vanka, 2008). Since public purpose enables exercise of eminent domain, greater ambiguity facilitates more exhaustive use of the same, and works to the advantage of the state. The Indian state has been using public purpose for expropriating land for decades. It is only during the last few years that abject misuse of public purpose has become a major source of agitation for the civil society with more and more instances of land acquired in public interest being used for private interest, becoming visible.

A comparison of ‘public purpose’ between the LAA of 1894, the LAA (Amendment) Bill of 2009, recommendations by the NAC, and the LARR Bill of 2011 (as detailed in Annexure), is useful in identifying its evolution over time. The latter three are attempts to qualify the conceptual domain of the LAA on the issue and have several commonalities with the original illustration of LAA justifying acquisition for village-sites, housing for the poor, displaced and victims of natural calamities, education, housing and health projects and development projects and schemes for producing public goods and services. The LAA (Amendment) Bill was the least detailed in explaining public purpose though it specified a group of infrastructure projects for which acquisition was justified (Annexure). Except the LAA, all the others highlight strategic purposes (naval, military, air force, armed forces, national security, defence and police) as essential public purpose.

The Amendment Bill of 2009 illustrates various Government infrastructure projects for which land can be acquired, apart from any other purpose ‘useful to the general public’, for which 70 per cent land has already been purchased privately. The NAC suggest almost the same, except for clarifying that any other purpose useful to the general public includes land for companies, provided 70 per cent affected people give their consent. The LARR Bill, for the first time, introduces two specific provisions for bringing the ‘private’ more explicitly into ‘public purpose’: public-private-partnerships (PPPs) and projects of private companies producing public goods. While it makes consent of at least 80 per cent of the affected people mandatory on the latter occasions, it does explicitly provide for the Government acquiring land for private enterprises (Annexure). The Standing Committee examining the Bill has expressed its strong reservations on the Government playing such a facilitating role for ‘for profit enterprises’ and the discretion granted to the executive for determining which PPPs and



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public good projects by private companies would be deemed as projects useful for the public and would therefore qualify for land acquisition by the state⁹.

Full Acquisition, Not Partial

Since 1962, all amendments (actual and proposed) to the LAA including the latest LARR Bill have tried to ‘accommodate’ acquisition for industry with various qualifications of ‘public purpose’ projects. Indeed, even the NAC’s recommendations, supposedly inspired by the rights-based approach, have sanctioned the state acquiring for private enterprises provided such acquisition enjoys majority support of the community.

The LARR Bill follows the NAC in principle and justifies Government takeover of land for PPP and other privately owned and operated projects subject to the community’s support. It enhances the benchmark for the latter to 80 per cent from the NAC suggested floor of 70 per cent. But in this respect, both the LARR Bill and the NAC mark a significant departure from the LAA (Amendment) Bill of 2009. The latter proposed acquisition for industry only after 70 per cent of the desired land was already obtained. The state was not expected to play a role in the initial transaction and was visualised intermediating at a much advanced stage following the request for doing so. This also meant that the LAA and its provisions would apply to only a minor part of the overall transaction. The LARR Bill, arguably inspired by the NAC, mandates a much larger intermediation by the Government for PPP and other private projects producing public goods, by suggesting acquisition of the entire project land subject to written consent of at least four-fifth of the original owners (Section 3(za) [vi and vii]). Unlike the amendment proposed in 2009, the current provisions would bring the entire land transaction under the purview of the new LARR law, irrespective of whether the appropriate Government acquires the whole project land, or a part of it, following requests from industry to do so after it has already purchased the bulk. The main implication of the greater coverage of the new law is in terms of the R&R provisions that apply to land acquired by both the government later, as well as that by industry

⁹ The Committee has proposed that “‘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”. It has proposed omission of ‘open ended’ clauses 3(o)(v) and 3(za)(vi)(B) and (vii), Clauses 2(1)(b) & (c) and 2(2)(b). See Standing Committee on Rural Development (2011-12), 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; [http://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition.%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC\(RD\)'s%2031st%20Report.pdf](http://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition.%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC(RD)'s%2031st%20Report.pdf) (accessed on 10 October 2012).

earlier¹⁰. The LARR appears to be aiming to sanctify exercise of eminent domain by taking umbrage to popular consent and compulsory application of R&R. This is probably where the Singur experience has left its indelible mark on the Bill¹¹. The LARR Bill's application of R&R to land acquired privately is an incremental provision over the NAC's recommendations. The latter did not favour Government acquisition of balance land after the bulk has been privately obtained and preferred all large acquisitions for private industries to be done homogeneously and in an undivided manner through a composite Act (NAC 2011). The NAC's reservations were on the ground that project land acquired partly through private negotiations and partly through acquisitions will result in discrimination between land owners with the resettlement prohibitions applying only to the latter. The LARR Bill has attempted to 'improve' on the NAC this by making the privately negotiated land transaction subject to resettlement provisions. Whether this will minimise the discrimination apprehended by the NAC is questionable since price of land negotiated with owners directly by industry is expected to be different from that decided by the executive for determining compensation and finalising R&R packages. This apart, subjecting privately negotiated land transaction to compulsory R&R provisions can come into conflict with other legislations relevant for property transactions such as the Indian Contract Act. Furthermore, the top down imposition of the R&R provision on both private purchases and state acquisition might not go down well with the state Governments since land is a 'state' subject according to the Indian Constitution. The Standing Committee while noting the concerns of the states has merely suggested deciding of limits of R&R by individual states without advising on the appropriateness of the Central legislation in this regard.

LARR Bill 2011: Improves Yes, Disappoints Also

There are views that compared with the LAA, 'public purpose' in the Bill is not defined unambiguously enough for limiting the scope of its misuse (Sahoo 2011). The NAC had sought to establish 'public purpose' through a well-defined and transparent process highlighting the nature of public interest in proposed projects, costs and benefits involved, and explanation of why other non-displacing alternatives are not feasible (NAC 2011). Section 4 of the LARR Bill does propose assessing public interest in prospective acquisition cases through Social Impact Assessments (SIA). The SIAs will

¹⁰ All land purchases by industry beyond a minimum threshold (100 acres or more in rural areas and 50 acres or more in urban areas; Section 2(2)) will now compulsorily attract the provisions of the LARR Bill.

¹¹ The Singur town in Hooghly district of West Bengal experienced protracted agitation and political turbulence over the state Government's land acquisition for a project of the Tata Motors. Out of 13,350 owners from whom land was acquired in Singur, 2300, or 17.2 per cent did not accept their compensations. The latter group accounted for 291 acres, or 29.2 per cent of land in the total acquisition parcel of 997.11 acres. See Mishra and Dinda (2011) for more details.



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allow public hearing to locals for voicing views on the proposed projects. The SIA findings (Section 7) will be examined by an independent group of experts for verifying the authenticity of public purpose. The Bill tries to establish a more legally acceptable, democratically inclusive and right-oriented process by proposing inclusion of Gram Sabhas in the SIAs. This is an improvement over extant provisions in Section 4 of the LAA, which vests assessment of public purpose and issue of notification entirely with local Governments and does not allow detailed impact assessments or involvement of local bodies in the process.

While involving local bodies in impact assessment is a rights-based step forward, the same thrust is missing for an individual land owner in so far as challenging the authenticity of public purpose is concerned. Section 5A of the LAA allows hearing of objections from affected parties by the ‘appropriate Government’, whose decision is final in the matter. The LAA does not provide further legal options for aggrieved owners. The NAC sought to amend the situation by recommending that a new land Act should enable individuals to challenge public purpose (NAC 2011). While the LARR Bill provides for public hearings during the SIA (section 4(5)), it does not mention how the SIAs might be impacted if some households are opposed to the project, but the majority is not¹². Section 16 of the Bill allows filing objections on notifications of acquisitions issued by the local Governments after the SIAs. Such objections, as section 16(1) [b] & [c] specify, can be for questioning the public purpose as well as the SIAs. Objections filed with the local Government (or the Collector, as is also the case in the LAA) will be heard and examined by the authorities. As section 16(1)[3] specifies, the decisions of the local Government will again be final in the matter. Clearly the Bill stops short of realising the aspirations of the NAC by leaving the executive to have the final say in deciding the authenticity of public purpose and not allowing the individual stronger legal remedies.

The Bill improves over the LAA in limiting forcible acquisition through the ‘urgency’ clause. Section 17 (1) of LAA of 1894 empowers state Governments to take possession of land for public purpose under ‘urgent’ circumstances within fifteen days of issuing notice for acquisition and without awarding compensation. Section 24 further empowers Governments by specifying that in deciding matters relating to award of compensation, the ‘urgency’ factor will be overlooked. These ‘enabling’ clauses have led to uncompensated acquisitions at short notice since situations qualifying as ‘urgent’ were

¹² This is precisely what had happened in Singur where the majority was in favour of acquisition. The LARR Bill’s implicit assumption could be consent of 80 per cent of affected people and families, which would imply that if the public hearing during the SIAs does not receive objections from more than 20 per cent of the affected, then the SIA proceeds unobstructed. The Singur experience, however, indicates that even less than 20 per cent of disgruntled owners might be politically strong enough to prevent acquisition.

never specified¹³. The LARR Bill specifies urgency possession (Section 38(1)) to defence, national security and emergencies related to natural calamities. It also specifies (sections 38(3) and 38(5)) that the Government will pay 80 per cent of the compensation before taking possession along with an additional 75 per cent of the market value of the land being taken over. There is, however, an ambiguity in form of Section 38(4), which mentions that for land being obtained under urgent circumstances, Governments might declare non-applicability of provisions under Chapters II to VI of the LARR Bill. The latter include several provisions including SIAs, notification, and R&R. Thus there is, however small, a window for Governments to invoke the ‘urgency’ clause in cases beyond what is otherwise specified.

Right to Property

Expectations from the LARR Bill on strengthening the rights-based foundation of the new land acquisition legislation by securing and protecting rights of the disadvantaged, particularly small and marginal property owners, have not materialized as it does not enable land holders to challenge acquisition on public purpose, which is what the NAC had aspired for. What the NAC did not mention, and what the LARR Bill also obviously does not, is that the current state of right to property in India does not enable owners to challenge expropriation on public purpose through a legally sanctioned process. Making the land legislation firmer on rights is not possible without upgrading individual rights to property.

Right to property was originally a fundamental right in India, along with the rights to freedom of expression, equality, against exploitation, freedom of religion, conservation of culture and language, constitutional remedies, information and primary education¹⁴. Articles 19 and 31 of the Indian Constitution held up the right to property. While Article 19(1) conferred upon all citizens the right to ‘acquire, hold and dispose of property’, Article 31 strengthened the right further by preventing deprivation of property except for ‘public purpose’ and by ‘authority of law’.

¹³ There have been several instances of misuse of the ‘urgency’ clause. Recent instances where courts have specifically referred to misuse of the provision include acquisition by Delhi Transco Limited for an electric sub-station at Mandoli village in Delhi and acquisition in villages at Noida, Greater Noida and Noida extension areas in Gautam Budh Nagar district of Uttar Pradesh by the state Government. See a) ‘Land Acquisition under Urgency Clause cannot be Casual, says SC’, *India Today*, 5 January 2012, <http://indiatoday.intoday.in/story/land-acquisition-under-urgency-clause-cannot-be-casual-says-supreme-court/1/167385.html> Accessed on 20 March 2012 and b) ‘Allahabad HC quashes land acquisition in 3 Greater Noida villages, probe ordered’, *India Today*, 21 October 2011, <http://indiatoday.intoday.in/story/greater-noida-land-row-allahabad-high-court/1/156970.html> Accessed on 20 March 2012

¹⁴ The Rights to information and primary education (for children) were introduced as fundamental rights in 2005 and 2010 respectively.



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Article 31 was subsequently deleted by the 44th amendment of the Indian Constitution. The same amendment also changed the right to property from ‘fundamental’ to ‘constitutional or legal’ right. The earlier protection to individuals for not being deprived of property by ‘public purpose’ or ‘authority of law’ is now a constitutional right under Article 300A¹⁵. The implication of Article 31 being replaced by Article 300A, or downgrading of the fundamental right to constitutional/legal right meant that acquisition on ‘public purpose’ could no longer be challenged in the Supreme Court by taking recourse to the right to constitutional remedies. The latter right, which is itself a fundamental right, empowers individuals to seek legal remedies for violation of other fundamental rights. If a particular right does not remain fundamental anymore, then guaranteeing its protection also does not remain a fundamental right. A constitutional right is a much weaker guarantee than a fundamental right. By weakening the guarantee, the 44th amendment made it easier for the Indian state to acquire private property on public purposes¹⁶.

There has not been any move to reinstate the fundamental nature of property right through the LARR Bill or any other legislation. This could be on account of the Government’s apprehensions that restoration of the status of the right would affect the prospects of acquisition on public purpose. The Supreme Court had sought the Government’s views on the subject¹⁷. The highest court’s stance on acquisition has been increasingly hardening as is evident from its verdict dismissing acquisition of land by the Uttar Pradesh Government and urging repeal of the archaic LAA¹⁸. The Supreme Court has been emphasising that the right to property, while no longer a fundamental

¹⁵ *The Constitution (Forty Fourth Amendment) Act, 1978* (dated 30th April 1979) <http://indiacode.nic.in/coiweb/amend/amend44.htm> Accessed on 14 March 2012.

¹⁶ A survey on physical property rights ranks India at 44 out of 129 countries. Apart from the OECD countries, many Gulf countries (e.g. Bahrain, Saudi Arabia, Oman, United Arab Emirates, Qatar, Jordan), Southeast Asian countries (e.g. Malaysia, Indonesia, Thailand), African countries (Tunisia, Botswana, Mauritius, South Africa) and China have higher physical property right scores than India. See ‘International Property Rights Index 2011 Report’, *Property Rights Alliance (PRA)*, Washington; Figure 5, Page 34; http://propertyrightsalliance.org/userfiles/file/ATR_2011%20INDEX_Web2.pdf Accessed on 20 March 2012.

¹⁷ Following a public interest litigation (PIL) filed by the Not-for-Profit Good Governance India Foundation, the Supreme Court asked the Government of India to explain why the petition seeking restoration of the right to property as a fundamental right, should not be allowed (Nayak, 2009). However, the petition was subsequently rejected.

¹⁸ ‘Right to Property is Constitutional Right’, *The Times of India*, 18 April 2011; http://articles.timesofindia.indiatimes.com/2011-04-18/india/29443051_1_land-owners-apex-court-land-acquisition-act (Accessed on 14 March 2012) and ‘Archaic land acquisition act should go: SC’. *The Times of India*, 27 June 2011; http://articles.timesofindia.indiatimes.com/2011-06-27/india/29708252_1_urgency-clause-land-acquisition-agricultural-land (Accessed on 14 March 2012)

right, is still a constitutional right and Article 300A does not allow for deprivation of private property except by authority of law. Notwithstanding the Court's emphasis, the lower quality of the right to property has facilitated rampant employment of eminent domain.

Life after the LARR Bill: Any Different?

The LARR Bill is fundamentally different in several respects from the amendment approved by Parliament (Lok Sabha) three years ago. The supersession of the 2009 amendment by the LARR Bill shows the shifts in the Government's views on the subject and the prevalence of conflicting opinions within the Government itself. The Standing Committee's critique of the Bill and the inability of the Government, till now, to arrive at a consensus on a revised version, highlight the continuing prevalence of divergent views.

The LARR bill improves upon the LAA in consolidating acquisition and R&R within a single composite legal framework. The qualification of the 'urgency' clause is also welcome. The ambiguity in 'public purpose', however, continues to remain. This might well be deliberate for enabling governments to acquire land for industries (Ghatak and Ghosh, 2011). If the Bill deliberately does so on the virtuous presumption that the state must play a facilitating role in land market transactions for reducing transaction costs and safeguarding various interests, and therefore, needs to step in through a vaguely defined public purpose, then it needs to ensure that the state's intermediation is indeed virtuous and the public purpose is indeed 'public'. Whether this can be ensured without allowing individuals the right to challenge the veracity of public purpose is doubtful.

The Bill deviates from the NAC's views in certain respects leading to disappointment in the Council¹⁹. As explained earlier, the NAC's recommendations emanate from its emphasis on the rights-based approach. The Bill attempts to be rights-based by proposing sweeping R&R provisions even for privately acquired land in PPP projects, rather than strengthening legal remedies against acquisition. These provisions do allow for greater damage control, particularly by compensating those who do not own land but are affected by its seizure such as landless labourers. But they do not strengthen individual rights; nor do they ensure misuse of eminent domain. In this respect, the Bill, in its current form, remains a sub-optimal legislation from a rights-based perspective.

¹⁹ N C Saxena, a NAC member, has criticized the LARR Bill for introducing provisions diluting intended benefits for people. See 'NAC Member accuses Ramesh of going back on his promise', *Hindustan Times*, 23 November 2011. <http://www.hindustantimes.com/India-news/NewDelhi/NAC-member-accuses-Ramesh-of-going-back-on-his-promise/Article1-773145.aspx> Accessed on 22 March 2012



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Annexure

LAA 1894	LAA (Amendment) Bill 2009	NAC	LARR Bill 2011
(i) Village-sites, or extension, development and improvement of existing sites; (ii) Town/rural planning; (iii) Planned development of land for implementing Government schemes and either leasing or selling the same for further development (iv) For State corporations; (v) Housing for poor, landless, people affected by natural calamities, or displaced or Government schemes (vi) Educational, housing, health or slum clearance schemes of Government and local authorities (vii) Any other development scheme of Government or local authorities; (viii) Locating a public office	(i) Strategic purposes (ii) Government infrastructure projects ²⁰ with benefits accruing to the general public (iii) Any other purpose useful to the general public, for which at least 70 per cent land has been purchased by private company/association/ individuals legally and the remaining is unacquired.	(i) Strategic purposes (ii) Government infrastructure projects with the benefits accruing to the general public (iii) Village or urban sites, project affected people, planned development or improvement of village sites, housing for poor, educational and health schemes (iv) Any other purpose useful to the general public, including land for companies, for which at least 70 per cent of the project affected people have given their written consent.	(i) Strategic purposes (ii) Railways, highways, ports, power and irrigation purposes of Government and public sector companies (iii) Project affected people; (iv) Planned development/ improvement of village/urban site, housing for weaker sections in rural and urban areas, Government-run educational, agricultural, health and research schemes or institutions, (v) Housing for poor and landless or persons affected by natural calamities (vi) Government use for other purposes (excluding (i), (ii), (iii), (iv) and (v)), where benefits largely accrue to the general public or Public Private Partnership projects for producing public goods (vii) In public interest for private companies for producing public goods and services. For (vi) and (vii) consent of at least 80 per cent of project affected people are necessary. If companies have already purchased part of project land and seek government intervention for acquiring the balance, resettlement & rehabilitation provisions will apply for whole area.

Source: Compiled from a) Land Acquisition Act, 1894 b) The Land Acquisition (Amendment) bill of 2009 (as passed by the Lok Sabha c) Note of Recommendations on the Land Acquisition, R & R Bill, National Advisory Council, Government of India d) The Land Acquisition, R & R Bill, 2011 (Bill no 77 of 2011 as introduced in Lok Sabha)

²⁰ Electricity, roads, railways, ports, highways, bridges, mining, educational, healthcare, transport, tourism, sports, space programmes, water supply, irrigation, sanitation, sewerage, housing for specific income groups.