

# Land Acquisition for Tourism

## A review of state practices, laws and policies

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*This paper gives a broad overview of the laws and policies of land acquisition in India, concentrating on the practices of 5 states of India (Andhra Pradesh, Madhya Pradesh, Orissa, Maharashtra, and Karnataka), and looking more particularly at the practices of land banking, and land acquisitions for tourism related projects.*

### Introduction

Land acquisition for infrastructure projects are now a common phenomena across India. The Government's economic policies through public private partnerships, special economic zones, incentivise industry resulting in phenomenal industrial growth. On the other side, displacement of villagers, and the degradation of fragile coastlands, forests, and farmland have also started to gain more and more attention. Of late, large-scale infrastructure related acquisitions such as those of POSCO in Orissa, and TATA in Nandigram and Singur have been met with strong resistance. The tireless work of people's movements, civil society and NGOs across India have highlighted these injustices, and worked towards overturning this method of development. In 2011, the government came out with the Land Acquisition and Resettlement and Rehabilitation Bill 2011, to finally implement the repealing of the colonial land acquisition legislation, and put resettlement and rehabilitation together with land acquisition.

Land acquisition has been prominent for tourism projects all over the country. Though not as high as in the case of mining, dams, and industrial projects the adverse impacts on livelihood, access to resources, decision-making powers of the community and socio-cultural ethos is no less than any other development project, which is forced. The roll out of Special Tourism Zones, land banks, and tourism policies focussed around tourism promotion has caused concern for farmer groups, fisher folk communities and people's movements. The growth of tourism has put immense pressure on land needs and areas are increasingly acquired to accommodate for the tourism industry. Land banking has started to be used by the tourism sector, where a state government will take an audit of state land and transfer it to the private sector for tourism projects. Similarly, state governments have been using the practice of land acquisition for "public purpose" in relation to tourism projects.

This report analyses the recent Land Acquisition and Rehabilitation & Resettlement Bill (LARR Bill), as well as looking at land acquisition for tourism projects in 5 different states: Orissa, Andhra Pradesh, Madhya Pradesh, Karnataka and Maharashtra, giving a broad overview of land acquisitions in these states. It is important to look at the government's practices of land acquisition within the political and economic context. Therefore, analysis will include looking at Private-Public Partnership policies, Special Economic Zone policies and other relevant policies.

The Report is set out as follows:

- a. Introduction to the ideas and concepts of land acquisition;
- b. Introduction to the economic context of land acquisition: SEZs and PPPs;
- c. Introduction to the concept of land banking;
- d. An overview of the Land Acquisition Bill 2011;
- e. An overview of the key policies and laws regarding land in each state;
- f. An analysis of the findings and conclusions.

## Limits of the Report

Because of the gravity and size of the issue of land and land acquisition, this report has several limitations to the scope of this study.

Though re-settlement and rehabilitation (R&R) is a major part of the land acquisition debate, further, the laws pertaining to land acquisition in forest areas and tribal areas are varied through special enactments.

Finally, the research done is only through secondary sources. **The figures are dependent on getting information from Government sources through the Right to Information Act 2005 (RTI). The process of EQUATIONS getting the information has begun, however due to the government bureaucracy this will take a time. EQUATIONS has received some information, however, as it is incomplete we present here the first version of the paper. On receiving more robust information, an updated paper incorporating the data will be released.** Therefore, this document remains an on-going paper which should be updated and edited as the statistics come in.

## **Land Acquisition: Background & Concepts**

The recent spate of agitation against acquisitions of land for industry and other projects have led to a new bill and framework being introduced by the Government. The new bill is part of a long history of the use of the concept of eminent domain by the State.

### A history of acquisition

The genesis of land acquisition in India lies in the Bengal Regulation Act (I) of 1824, enacted to promote British commercial interests in the country.<sup>1</sup> Over the better part of the 19th century, the British enacted several land acquisition laws before finally consolidating with the Land Acquisition Act 1894 (LAA 1894). The need of the hour was the acquisition of land swiftly, minimising compensation payments which were seen as a drain on the exchequer. The imperial stance was evident in one simple fact: 'public purpose' was neither defined nor elaborated.

The end of colonial rule did not however bring about changes to this framework of land acquisition. As per the Indian Constitution, colonial laws remained in force until repealed. The Nehruvian era saw heavy industrialisation, largely under the public sector. Numerous large dams, power plants, mines, and steel and heavy engineer plants were built on land acquired using the 1894 Act, causing large-scale displacement. However, it was not only the public sector which acquired land. Land for the purposes of private sector was also acquired by state governments. This led to the landmark judgement of R.I. Aurora v State of UP in 1962, where the Supreme Court held that the government could not justify acquiring land for a textile machinery manufacturer as a 'public purpose'<sup>2</sup>. It further declared that 'the Land Acquisition Act did not contemplate that the Government should be made a general agent for companies to acquire land for them for their private profit.' Rather than changing this practice as the Supreme Court ordered, the Nehru government chose to implement the Land Acquisition (Amendment) Act 1962 to allow land to be acquired for a company, which was engaged in or was taking steps for engaging in any industry or work for a public purpose. This was applied retrospectively and superseded the earlier Supreme Court judgement<sup>3</sup>.

With the opening up of the Indian economy in the 1990s and a drive for private investments, land acquisition was again crucial to the economic structure. On the other side, displacement of villagers, and other negative effects of acquisitions started to gain more and more attention. Strong resistance movements and a changing public perception have garnered the cry for change. The Project Affected Persons have also awakened to their

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<sup>1</sup> Sanjukta Ray and Shremoyee Patra, "Evolution of the Political Economy of Land Acquisition," *India Infrastructure Report 2009*: 41-44.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

right to participate in the future stream of gains from the envisaged development<sup>4</sup>. This has led to a fresh look at the legal framework of land acquisition.

### Eminent Domain

The ability of the state to acquire land for such projects arises from the doctrine of "Eminent Domain". The restriction which is placed on such acquisition is that there must be some "public purpose". Under the doctrine of Eminent Domain every state reserves the authority to appropriate or confiscate or deprive the owner of the lands situate within the limits of the jurisdiction for purposes of public utility. Eminent Domain comes from the colonial principle of terra nullius according to which land not having individual ownership documents belongs to no one, and hence accrues to the state. British colonisers applied this principle in occupying land in Australia, New Zealand, South Africa and the Americas. This principle was declared invalid in Australia by the Mabo case in 1993, but it continues to follow in India. The doctrine inherited from colonial legislation was adapted to the needs of the modern developmentalist state.

Eminent domain is similar to the power of taxation, an offspring of political necessity. It has been held by Courts in India that there is an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owners.

The Court also held that it is also implicit in the concept of acquisition or requisitioning that the acquisition or requisitioning shall be of private property only, for a public purpose on payment of 'just compensation'. The Indian Constitution has laid down in express terms that any law made shall not violate the fundamental rights. One of the fundamental rights is that enshrined in Art. 31(2), stating that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law, which provides compensation for the property so acquired or requisitioned.

### Market Economics of Eminent Domain

The argument for eminent domain is also made by Neo classical economists. Neo classical economists view land as a factor production or commodity that should be traded on the market. The case for eminent domain is under a market, which is imperfect.

If the price of land is to be determined by market forces, it is assumed that there is a market for lands under acquisition in every place. However, there are situations where the market is imperfect. First, if the land is to be submerged or lost forever due to an infrastructure project, such a market will not exist and the price will be negligible as there would be no demand for it. Second, there may be situations where landowners who do not want to part with their lands no matter what. In this situation the project, if location specific, cannot go ahead. Third, even if owners are willing to sell as they are aware of the inevitability of the project, they may start demanding high prices for parting with their land. The price of land would soar and the viability of the project will be affected. These situations cause the market imperfect<sup>6</sup>.

Where markets are imperfect, neo classical economists argue for state intervention. Without state intervention, the infrastructure projects would be nearly impossible. The state's role here is to supply a basic requirement – the land, albeit, at a reasonable price <sup>7</sup>.

### A Vague Concept of Public Purpose

The laws require that eminent domain powers can be used only in projects where the aim is to serve public purpose. Thus, what constitutes 'public purpose' becomes central to a land acquisition. Under the Land

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<sup>4</sup> Ibid

<sup>5</sup> Chiranjit Lal Chowdhri v the Union of India (1950) SCR 869.

<sup>6</sup> Jaamdar, S.M. "Economic Liberalisation, the State and R&R". In *The Economics and Politics of Resettlement in India*, edited by Shobita Jain and Madhu Bala, 135-148. New Delhi: Pearsons Education India, 2006.

<sup>7</sup> Jaamdar, S.M. "Economic Liberalisation, the State and R&R". In *The Economics and Politics of Resettlement in India*, edited by Shobita Jain and Madhu Bala, 135-148. New Delhi: Pearsons Education India, 2006.

Acquisition Act 1894, a law made for the purpose of securing an aim, which has been declared in the Constitution to be a matter of the directive principles of state policy, will be for a public purpose within the Indian Constitution. Thus, it was an inclusive definition of public purpose, which gave the state a discretionary power to acquire lands.

The view of the public interest over the private and of a vague notion of public purpose is reaffirmed in the case of *Daulat Singh Surana v First Land Acquisition Officer*, where the Court's position of eminent domain is revealed. The Court states that "ambiguity, indefiniteness, and vagueness of public purpose are usually the grounds on which notification under Section 4(1) of the Land Acquisition are assailed." It goes on to state that the concept of 'public purpose' cannot and should not be defined, as it changes with the passage of time; and the interests of the community is always superior to the interest of the individual.

### Land: A Commodity or an Anchor of Social Identity

Land is often viewed as a solely a private good, which should be transacted like any other commodity in the market place. This view is especially advocated by proponents of projects. But several land owners in India, especially the poor in rural areas, view land differently: for them, land is the primary asset, a source of livelihood for several generations, and a factor that determines their skills. However, economic liberalisation has strengthened the view of land as a factor of production, and commodity to be traded.

As ecologist and activist Vandana Shiva points out 9:

*Land, for most people in the world, is Terra Madre, Mother Earth, Bhoomi, Dharti Ma. The land is people's identity; it is the ground of culture and economy. The bond with the land is a bond with Bhoomi, our Earth; 75 per cent of the people in the Third World live on the land and are supported by the land. The Earth is the biggest employer on the planet: 75 per cent of the wealth of the people of the global south is in land.*

With land viewed as a simple commodity, the current Indian legal framework also assumes the displaced person to be a "willing-seller" of his land by granting only monetary compensation 10. Such a view fails to address the long-term implications of land dispossession.

The myth of the willing seller is also perpetuated through legislation which ignores stakeholders other than the landowner and tenant. The Land Acquisition Act 1894 allows village common property such as wells, grazing lands to be acquired. The people, who are indirect-beneficiaries by way of traditional rights, are not recognised under the Act 11.

### State Amendments to the National Land Acquisition legislation

Under the Constitution of India, states have the legislative competence to enact laws relating to land. Facilitating land acquisition is one of the three main aims of state land legislations in India, the other two being regulating administration and development and introducing land reforms. In addition, they have a significant role to play in the R&R process of those involuntarily displaced. So while the LAA 1894 provides the principal framework for land acquisition in the country, the states have adopted it for application within their respective jurisdictions. However, as we shall see with the states examined in this paper, the amendments made by states have generally related to procedure. Rarely has a state made any substantive amendments to the framework of land acquisition laid out in the LAA 1894.

### **Economic Context of Land Acquisition: SEZs and PPPs**

The economic context of land acquisition in India today needs to be examined to understand the issues that arise. Since the 1990s, India has embraced open markets and neo liberal economics. Private companies have also begun to take on many of the roles traditionally reserved for the government. The need of the hour has been 'attracting investment' for GDP based economic growth. Almost every state government in India now acts as a facilitator of bringing greater private investment into the state. Especially since the Tata-Nano Singur

episode, where Tata faced agitation over their West Bengal factory and decided to move to Gujarat, the threat of such capital flight and the competition between states to attract investment has increased this facilitative role <sup>12</sup>.

### Special Economic Zones

The last decade has seen a proliferation of Special Economic Zones all over the country. In 2000, the eight existing "export processing zones", the first of which dated from 1965, were converted into SEZs. And in 2005, the Special Economic Zones Act affirmed the Government's plan to roll out SEZs. Since 2005, there has been what has been described by the Economist as a "bureaucratic equivalent of a gold rush" with more and more companies apply for SEZ projects <sup>13</sup>. When the SEZ Act was passed in 2005, it generated a euphoric response from the private sector. Current figures show that there are 582 approved SEZs under the SEZ Act and a further 44 "in-principal" approvals <sup>14</sup>. However, it has raised concerns from those who do not see SEZs benefiting them but rather increasing hardships of economic livelihood and sustenance of people <sup>15</sup>.

Large scale forced displacement, massive unregulated exploitation of natural resources and environment, no public consultation, complete lack of transparency in the process of earmarking an area for the establishment of such a zone to the step of granting of approval to start operation are just few of the many land-based concerns raised by the farmers groups, fisher folk communities and broad based peoples movements against SEZ projects in India. The issue of development and the links between growth and development are very often completely missing in the model of SEZ.

The economic basis of SEZs is also questionable. The fear of many economists is that rather than promoting new business, the SEZs will merely attract investment that would have been made anyway. There are also fears about whether the country can handle the lack of revenue from these projects <sup>16</sup>. It all adds credence to the thoughts of many movements against SEZs around India that the costs far outweigh the benefits.

Tourism is also in the list of industries seeking potential benefits from the SEZ policy. According to the SEZ Act, 2005 and corresponding Rules, only 25% - 35% of the total area in any SEZ need be statutorily used for developing and setting up of the industrial/ manufacturing units. The rest of the land can be used for developing infrastructure. 'Infrastructure' according to the same SEZ Rule includes 'social amenities' like roads, housing, hospitals, hotels, leisure, and recreation and entertainment facilities. This gives an open invitation to the hospitality, entertainment and hotel sectors to make the most with SEZs. These industries' hopes were given a shot in the arm when the National Tourism Advisory Council (NTAC) proposed to the Ministry of Tourism and Culture that the government should also consider Special Tourism Zones (STZs) on the lines of SEZs.

### Public Private Partnerships

Tourism's development the past few decades has shifted from solely the informal and private sectors towards public sector intervention and public-private models.

PPP refers to "an arrangement between the public and private sectors with clear agreement on share objectives for the delivery of public infrastructure and/or public services"<sup>17</sup> They are generally seen to be based on five shared characteristics: cooperative and contractual relationships, share responsibilities, a form of procurement, transfer risks, flexible ownership. The very nature of PPP's however has grave implications for a democratic and accountable governance.

PPPs are negotiated and designed by two partners – a government body and a private company – with the support of other public and private agencies, e.g. The PPP cells or the sectoral department and the empanelled corporate groups set up for the purpose. There is very little information provided about the role of the public, i.e. Communities affected by the project or benefiting from them ('users'), and civil society, i.e. Environmental groups, citizens' rights activists, etc.

Land is often a critical part of a PPP Project. The policies of PPP often call for a streamlining of clearances, appraisal mechanisms and land acquisitions processes. The Government's role becomes one of enabling private sector participation. 18

Tourism is often included in state policies as one of the infrastructure types which a PPP can be borne. However, there is often no differentiation between different kinds of tourism projects. There is a distinction between tourism projects which are open to the public to access and those which only the elite can access. As EQUATIONS has stated before, while it is the duty of the State to ensure that sanitation facilities, public markets, access roads and so on qualify as public purpose, but there is no reason for the tourism department and tourism development corporations to be involved in the creation of high end projects such as 5 star hotels, and luxury resorts.

## **Land Banking**

'Land Banking' is a practice which can be applied in a variety of different ways depending on the context and whether it is applied by the private or public sector. There are several ways land banks are created. The state government often creates a land bank of 'unused government lands', which the government will then tender off to private investors for industrialisation. The state government may also acquire land holdings through land acquisition legislation and then tender these off to the private sector. Apart from selling off to the private sector, Public-Private Partnership models may also be used by the government for infrastructure development.

In many parts of the developing world, 'Land banking implies that government acquires land in advance of needs. The main advantages are that it allows the purchase of land, relatively cheaply, for public purposes and provides a tool to influence the pattern of development in accordance to overall planning objectives'. 19

While in many countries there are examples of land banking being used for improving access to land for the poor, or to support development of low cost housing initiatives etc. In India, land banking has been increasingly used for facilitating the availability of land for private sector projects, special economic zones, or projects under the PPP model. In these instances, a public authority is using land banking as an instrument for economic growth. 20

In economic terms land banking can bring benefits. Lichfield 21 has contended that successful land banking is able to ensure:

- a. Allocative efficiency, and
- b. Distributive equity

In theory, land banking can be underpinned by the belief that if government has access to a pool of land, they will be a responsible custodian of this resource and allocate it more equitably than if left to the market.

In principle this could be the case, but only in instances where the technical and legal processes of land banking are effectively managed and where there is an ongoing commitment to equity. Studies have shown however that land banking has had low success in delivering land to the poor in India. 22

The difficulties private land developers have faced in recent times, as highlighted through land agitations and resistances have led to Indian industrialists pushing the government to create such banks. Industrialists have stated that there is an "urgent need to streamline land acquisition and environment clearance for infrastructure", the Economic Survey for 2010-11 recommended setting up a National Forest Land Bank to expedite clearances. 23.

## **Land Acquisition Bill 2011**

The Government of India has recently released the Draft National Land Acquisition and Resettlement and Rehabilitation Bill 2011 (LARR Bill). The LARR Bill seeks to repeal and replace the Land Acquisition Act 1894. This section will assess the draft LARR Bill, particularly in the context of the rising trend of land banking for tourism projects.

The LARR Bill serves several purposes:

- o to balance the need for facilitating acquisition for industrialisation, development of essential infrastructure facilities and urbanisation, while at the same time to meaningfully address the concerns of farmers and those whose livelihoods are dependent on the land being acquired;
- o to prevent the human and social suffering caused by involuntary displacement, by minimizing the displacement of affected persons and mitigating the adverse impacts on people and their habitats;
- o to comprehensively define and identify project affected persons/families to ensure that they are provided with a just compensation and rehabilitation and resettlement package, sensitive to the aspirations, culture, community, natural resource base and skill base of the affected people; and
- o Ensuring a humane, participatory, informed, consultative and transparent process and above all ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development.

The Bill itself sets the need for industrialisation and land acquisition as its priority right from the start. A foreword to the draft bill that Union Minister for Rural Development Jairam Ramesh displayed on the ministry's website on 27 June 2011 begins by stating: "Infrastructure across the country must expand rapidly. Industrialisation, especially based on manufacture, has also to accelerate. Urbanisation is inevitable. Land is an essential requirement for all these processes."<sup>24</sup>

## **Analysis of the Bill**

### Application of the LARR Bill

The LARR Bill, when enacted, intends to apply when the government is acquiring land

- for its own use, hold and control; or
- with the purpose of transferring it to private companies for a public purpose (including Public Private Partnerships); or
- on the request of private companies for a public purpose

Provisions relating to rehabilitation and resettlement also apply when

- o A private company is purchasing or acquiring land of 100 acres or more in rural areas, or 50 acres or more in urban areas
- o A private company requests the Government to acquire part of an area so identified for a public purpose (the provisions will apply then to both the government acquired area and the private companies area).

### Public Purpose

The LARR 2011 has made an attempt to define 'public purpose'. This definition has already gone through several iterations, with the definition provided in the draft bill for discussion, given out in July 2011, being widely criticised by land activists for being too wide, the Government has tried again to narrow the definition, through the current LARR 2011.

The LARR Bill, in its current form, defines 'public purpose' as including the provision of land for (emphasis mine):

- a. Strategic Purpose – e.g. for the armed forces, or in the interests of national security
- b. railways, highways, ports, power and irrigation for use by the government and public sector companies/corporations
- c. land for project affected people
- d. 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.

- e. 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;
- f. in public interest for
- g. use other than those covered above, where the "benefits largely accrue to the general public" or
- h. Public Private Partnership projects for "production of public goods or provision of public services"
- i. in public interest for private companies for the production of goods for public or provision of public services

Under (f) or (g) eighty percent consent is required for project affected people.

1. The problems with this definition are again to do with the wide scope for acquisition possible under the clauses.
2. Clause (iv) can be interpreted to allow for most real estate developments, and large scaled "planned developments" for any type of purpose, to come under the purview of 'public purpose'. This clause is also not subject to the 80% consent requirement of project affected people.
3. Under clause (vi), public private partnerships are deemed as a 'public purpose', without reference to the type of, or need for, the particular public private partnership project. As shall be shown in this report, public private partnership projects are being used in a wide variety of sectors for projects without any real analysis of the benefits to the wider public.
4. Clause (vii) is another wide-ranging, vague rule allowing 'public purpose' to encompass projects are in "public interest" which has not been defined in the bill, for private companies which produce "goods for public" or "provision of public services". It can be argued that this could encompass a wide variety of goods, with no definitions provided.

### **Tourism a Public Purpose**

Tourism has in the past been included in the definition of 'Public purpose'. In the case of *Fomento Resorts & Hotels & Anr. v Minguel Martins & Ors.*<sup>25</sup>, one of the questions which was in front of the Court concerned the acquisition of two plots of land to form part of a hotel complex which was being built. The notification issued by the State Government said that the land was needed for a public purpose, namely a tourism development project. The Court stated that "tourism is an important industrial activity in Goa which attracts tourists from all over the country and abroad. A huge amount of foreign exchange is generated by this industry apart from providing employment and ancillary benefits to a large section of the population of the State. Therefore, the acquisition of land for tourism development project is certainly for a public purpose.

Under the definition of the LARR Bill, and using the above rationale, tourism can be seen to fit into the purview of 'public purpose' under clause (iv), (vi) and (vii) if the current rationale on ideas around public purpose continue.

Further, the LARR Bill makes no distinction regarding which PPP projects are of public interest and which are not. There is an assumption that all PPP projects are for a public purpose. As shall be shown, many PPP projects in tourism, such as hotels and resorts, are scarcely serving a public purpose.

### **Land Banking of Unutilised Land**

Under clause 95, lands which are acquired under the Act but not utilised within a period of 10 years, will be returned to the Government Land Bank. Interestingly, clause 93 states that no change of purpose shall be allowed for acquired land. Unless the land which returns to the Government Land Bank under clause 95, is only used for the original purpose, there appears to be a contradiction.



Clause 95 can be seen as a way of incentivising against the waste of an acquired land due to stalled projects, a practice which has been increasingly occurring with large scale acquisitions which get stalled for funding and other reasons.

## **Andhra Pradesh**

In Andhra Pradesh (AP) land acquisition for irrigation projects, SEZs, and industrial and power projects have become major issues of contention. The Majority of the land losers are small and medium farmers, and tribals whose livelihoods are adversely affected. Land reform in Andhra Pradesh remains an unfinished agenda. Andhra Pradesh is the most populous state in South India, with a primarily agrarian economy. Tenancy farming is still widespread, and for the tenant farmer recent times have been tough. <sup>26</sup>

Andhra Pradesh also has the highest number of SEZs of any state. Lakhs of people have been displaced from mega projects, dubious land deals, and indiscriminate allotment of land to industries.<sup>27</sup> Faced with strong criticism and pressure to reform, the Andhra Pradesh government has changed its land allotment policy. A draft policy is now under circulation.

Within this context, the following state policies and laws have relevance to our study:

- o Andhra Pradesh Tourism Policy 2010
- o Andhra Pradesh Infrastructure Development Enabling Act 2001
- o Andhra Pradesh Infrastructure Policy

### Laws

Andhra Pradesh has made only procedural changes to the LAA 1894. The LAA 1894 specifies that the preliminary notification needs to appear in the affected locality with no mandate of a time frame. Through the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983, public notice of the notification to acquire land must appear in the affected locality within forty days of publication, making the process time-bound.

### Tourism Policy

The Andhra Pradesh Tourism Policy 2010 emphasises the role of the private sector in building tourism through the PPP model.

*It can be safely concluded that the development of tourism is best possible if created jointly by the Government and the Private Sector in which the Government is the enabler and the Private Sector is the dominant partner.*

The AP Tourism Policy envisages a role for the Government as essentially a facilitator, stating the role of the Government is to:

*Provide overall policy support, create nucleus infrastructure in the initial stages of development to demonstrate the potential of the area, introduce regulatory measures to ensure social, cultural and environmental sustainability and to ensure complete involvement and ownership of the local community in the tourism initiatives.*

Land banking and acquisition is set out clearly as a policy point. The AP Tourism Policy states that:

*Government will facilitate in the land assembly required for any tourism product considered feasible and as per government's own priorities. For this purpose, the Tourism Department will maintain a land bank at different locations having potential for tourism promotion, and lands from that bank can be offered to the developer on lease basis.*

Further, where government lands are not available, the Government shall "consider acquiring private lands required for the tourism product, if it is as per its priorities."

### PPP in Andhra Pradesh

Andhra Pradesh leads the country in the number of PPPs , and the highest number of tourism projects, by far, in India is also being implemented in the state.<sup>28</sup> There are 216 PPP projects currently undertaken.<sup>29</sup>

Andhra Pradesh has state legislation governing their PPP sector. The Andhra Pradesh Infrastructure Development Enabling Act 2001 set up a comprehensive infrastructure development framework. Under the definition of "State Support", the Andhra Pradesh government offers, to all projects covered under the Act, "land necessary for the Project".<sup>30</sup> Further, "Government owned land will be provided at concessional lease charges" , with exemption on stamp and duty charges.<sup>31</sup>

There are currently nine Budget Hotel projects, 27 Entertainment Centre projects, and one Tourism Amenity project listed by the state Government under implementation. These include several high-end projects:

- 6 Health Spas or Health Resorts
- 1 Five-star Hotel
- 4 Beach Resorts
- 2 Golf Courses

### Special Economic Zones

Andhra Pradesh has the highest number of SEZ's of any state in India. Under the Special Economic Zone Act 2005, there are a total of 109 SEZs formally approved, 6 approved in principle, and a further 75 notified as SEZs, in Andhra Pradesh. <sup>32</sup>

As a result of the rampant implementation of SEZs in Andhra Pradesh, large amounts of land have been acquired, lead to displacement, and also agitation and resistance. Some of these resistance efforts include standing in local elections, as a group of displaced Dalits did in Polepally, and shook up the voting constituents of the Congress party candidate who lost the election to his rival. This was a repeat of what happened in Jacheria in May 2008, where the displaced candidate caused the defeat of a sitting legislator of Telengana party.<sup>33</sup>

### Land Banking

Under a Government Order in June 2010, the Government of Andhra Pradesh

*Will create land banks for industrial parks. Industrial Parks will be developed across the State over the next 5 years. The land banks will also meet the land requirements of anchor industries which have huge employment potential. Efforts will be made to identify waste/barren/dry lands in different parts of the State.*<sup>34</sup>

Newspaper reports are that Government ministers are preparing rules for land banking.<sup>35</sup>

## **Orissa**

Land Acquisition has been a major talking point in Orissa. Most recently the POSCO land acquisition was met with major resistance. Orissa is also made up of large portions of forest land, and tribal land as well as natural resources, and a coastline, giving rise to major competing interests over land.

### Existing Laws and Policies

Land acquisition in Orissa is governed by the Land Acquisition Act 1894, as well as local legislation, the Orissa Land Acquisition Amendment Act, 1948 and Orissa Resettlement & Rehabilitation Policy 2006.

Further to this, the following policies have relevance:

- Orissa Industrial Policy 2007
- Orissa PPP Policy
- Orissa Tourism Policy

Some of the major land acquisitions for projects are posted below (source: Department of Industries, Odisha)

Name of Project	Location	Area Allotted
Jindal Steel & Power Ltd	Kerajang & Chhendipda, Angul	1165.41
Monnet Ispat & Energy Ltd	Chhendipada, Angul	131.82
Utkal Co. Ltd	Chhendipada, Angul	816.86
Tata Power Co. Ltd	Narag, Marthapur, Cuttack	780.084
Lanco Solar Pvt Ltd	Ramdaspur, Cuttack	104.66
gmr Kamalanga Energy limited	Kamalanga, Dhenkanal	864.915
Vedanta aluminium limited, smelter Jharsuguda	Bhurkamunda, Jharsuguda	111.05
Hindalco industries limited (Aditya)	Hirakud, Sambalpur	210.74
Bhushan power & steel limited	Jamukani village in Sundergarh	409.11

The UNDP Report goes on to further lay out the governance of land acquisition in such cases. In accordance with the Panchayat Extension to Scheduled Areas Act 1996 (PESA 1996), land acquisition power is vested with the Gram Sabha or Panchayat. PESA 1996 mandates that there should be consultation before land acquisition for development projects and before resettling or rehabilitating persons affected by such projects. But in Orissa, the District Collectors and special land acquisition officers have been asked by the revenue department to submit proposals for the acquisition of land in scheduled areas along with copies of the resolution of concerned Gram Sabha/Panchayat. On the one hand, the relevant laws and procedures that could have made land acquisition stringent are being slowly diluted. On the other hand, the operations for land acquisition do not follow what has been agreed upon. For example, the concerned company/industry has to submit a rehabilitation plan and design before the land acquisition process begins. Though the 'informed consent' of the Gram Sabha is mandatory for land acquisition, district officials usually consult the local elected representatives. Consultation with the Gram Sabha is more an aberration than practice. On the other hand there have been cases of the autocratic side of 'informed consent' with *Sarpanch (head of village council)* taking his/her own decision on land acquisition.

#### Orissa Industrial Policy 2007

The Orissa Industrial Policy (OIP) was passed in 2007 with an aim of creating “a business climate conducive to accelerate investment in industry and infrastructure projects.” The OIP establishes a policy of single window mechanism, which was created under the Odisha Industrial Facilitation Act 2004, whereby all clearances required to start and operate an industry, are processed through a single point within a set time period.

The OIP also states, with reference to land: 36

*The State Government shall announce a comprehensive Land Policy to address all issues concerning identification, procurement and allotment of land for industrial and allied purposes, including creation of associated social infrastructure. IDCO along with Revenue Department shall vigorously implement the Land Bank Scheme, which was announced in the IPR-2001 to ensure orderly industrial growth. IDCO in association with DLNAs shall identify suitable tracts of government land for this purpose, which shall then be considered by the DLSWCA for alienation in favour of IDCO.*

#### Orissa Public Private Partnership Policy

The Orissa Public Private Partnership (PPP) Policy was passed in 2007. The PPP Policy seeks to facilitate private investment in the infrastructure development of the state. Included in the infrastructure sectors covered by the PPP is “tourism and related infrastructure”.

The PPP model is being used to bring in greater private sector investment in tourism in Orissa. The Department of Tourism (DoT) operates several accommodation units like Panthasala, Tourism Complex, and Wayside Amenities Centre at several locations across the state. Recently, the DoT has proposed to upgrade

facilities, promote tourism and unlock the commercial value of these properties by leasing these 35 of these properties on upgrade, develop, maintain, manage, share and transfer basis for thirty years on PPP mode. 37

A total of 52 PPPs are currently present in Orissa. Of those, the projects relating to the tourism sector are listed below. Only one is currently operational and an additional two have reached financial closure, while the rest are in the bidding phase. 38

<b>Project Name</b>	<b>Location</b>
Shamuka 4 Hotels	Puri
Shamuka Master Developer Project	Puri
Mindspace IT Park	Bhubaneswar
Mahodadhinivas - a Hotel with Heritage Look & feel	Puri
Operation of Hop-on-Hop-Off Tourist Bus	Bhubaneswar
OTDC Restaurant Project	Bhubaneswar, Cuttack, Rourkela, Konark, Nandankanan, Barkul, Sambalpur and other identified Panthanivas locations
OTDC Spa Project	Bhubaneswar, Cuttack, Rourkela, Konark, Nandankanan, Barkul, Sambalpur and other identified Panthanivas locations
OTDC Eco-Resort Project	Ramchandi, Near Konark, Dist. Puri
Orissa Tourism Portal- Operation & Management	Bhubaneswar
31 Tourism Property	All over Orissa
Eco-Camps, Baliput	Narasimpur, Angul

In Orissa, for example, for the Government to engage in a PPP for the Shamkula projects listed above. The Project has numerous land acquisition, and is currently going through litigation for various plots which are required. 39 The Shamuka project is set to include a number of constructions which are purely benefiting only a small section of society. These include five and four star hotels, resorts, spa, convention centre, golf course, exhibition complex, eco parks 40. The tourism department's secretary has already stated that the project was dedicated to up-market tourism "with only 5 star hotels". 41

The Orissa PPP Policy provides no guidance or criteria as to how a project is identified to be a PPP project, or any definition of 'public purpose' in defining a Public Private Partnership. Therefore, any tourism project can come

The Orissa PPP Policy does provide for the "Protection of Stakeholder Rights", which includes safeguarding the interest of local communities; adopting, adapting, and developing MCAs to incorporate stakeholder rights protection in all project documents. These protections are however weak. They are not robust enough to implement with any serious consideration.

## **Tourism Policy**

Orissa is currently preparing a new tourism policy. 42

### Special Economic Zones (SEZs)

SEZs are those areas within which the export-oriented industrialists and big business groups would be given land at a low price and various tax incentives. Since 1991, these sorts of acquisitions have been happening all over India. The SEZ Policy or Orissa, 2007 has made land acquisition and development easier relaxing a number of legal compliances. As the figures below show, the number of SEZs in Orissa remains low compared with other Indian states.

	Formal Approvals
Orissa	9
India	439

Source: Ministry of Commerce <sup>43</sup>

In Gopalpur, Orissa TATA plans to build the 'Gopalpur Industrial Park' a multi-product SEZ. In 1995, TATA acquired the 3200 acres of land for a proposed mega steel plant project. During that time, the public in Chatrapur and Gopalpur area protests vehemently. <sup>44</sup> However, the Orissa government managed to overpower the villagers and acquire the land, which was fertile. TATA later shelved the originally proposed idea of the mega steel plant, and has now proposed the industrial park project. The Orissa Government has fully backed the idea, seeing the "investment potential of 21,000 crores", and will not relocate villagers back to the site despite the change of purpose and use. <sup>45</sup>

#### Land Banking in Orissa

Orissa is initiating steps to earmark land for the creation of a land bank for tourism projects.<sup>46</sup> As shown already, the OIP and the Tourism Policy encourages private investment in tourism, in particular through the PPP Model. The push for land banking has been through private sector, with tourism industry groups such as the Hotel and Restaurant Association of Orissa lobbying for its implementation.<sup>47</sup> A land banking policy is seen as the next step in terms of facilitating private investment in tourism.

### **Karnataka**

In recent years, land acquisition has come into the spotlight in Karnataka through numerous scandals involving illegal mining and the construction of illegal structures.

#### Laws and Policies

Land acquisition in Karnataka is governed by the Land Acquisition Act 1894, as well as local legislation, the Land Acquisition (Karnataka Amendment and Validation) Act 1967 (which amends requirements under section 4 and 6 of the LAA 1894), and the Karnataka Industrial Areas Development Board Act 1966.

The 1967 Karnataka Amendment adds that public purpose includes 'provision of land for a company for construction of such work that is likely to prove substantially useful to the public'. This again weakens the public purpose of the acquisition through merely a possibility ("likely") of usefulness to the public.

Land which is acquired for industrial purposes by the Karnataka Industrial Areas Development Board (KIADB) is governed under the KIADB Act 1966. Land which is acquired for residential purposes is acquired by the urban development authorities. Land for infrastructure projects such as railways, road, and public buildings are acquired through the LARR 1894 by the Revenue Department.

### **Karnataka Industrial Areas Development Board Act**

The KIADB Act makes acquisition for industrial purposes more efficient for the state. Under the Act, "industrial infrastructural facilities" includes "townships for the purpose of establishing tourism centres". These fall under the general definition of "infrastructure".

As we have outlined previously, the LAA 1894 deals with land acquisitions in general in India. The LAA 1894 enables land acquisition by the Government for a public purpose. The KIADB Act is a state enactment which allows for quick and easy acquisition for industrial purposes. The main object of the Act is to "secure the establishment of industrial areas in the state and to promote the establishment and orderly development of industries therein." Therefore, in the KIADBA, it is assumed that industrial purposes are a public purpose.

- o The KIADB Act does however have a process for negotiation which involves the Board, industrialists and the owner of the land however reports are that in no case has the decision gone in favour of the displaced person. Further, as there are 250 cases still pending against the Board in the Karnataka High Court clearly shows the undemocratic nature of the Act. <sup>48</sup>

The process for land acquisition for industrial purposes in accordance with section 28 KIADB Act 1966 is:

- o notify of the intention to acquire such land to the owner, or occupier of the land; <sup>49</sup>
- o the owner or occupier then has thirty days from the date of service of the notice to state why the land should not be acquired; <sup>50</sup>
- o After considering the cause, and giving the opportunity for the owner or occupier to be heard, the State Government may pass such order as it deems fit; <sup>51</sup>

Since inception, the KIADB has developed 136 Industrial Areas in 28 districts of the state covering an area of about 40541.02 acres. After the orders are passed, and if the State Government is satisfied that land should be acquired for the purpose specified in the notification, a declaration shall be made. <sup>52</sup>

The KIDB has acquired an extent of 24674.25 acres of land for the formation of Industrial area and also in favour of Single unit complex during 2010/11.

The details are as follows:

- o Industrial area: 11093.16 acres
- o Single Window unit complex: 13581.09 acres

The Government of Karnataka is also formulating a land acquisition policy in line with the LARR. <sup>53</sup> Further, the state has an Industrial Policy, PPP Policy and Tourism Policy.

#### Karnataka Industrial Policy 2009-14

The Karnataka Industrial Policy 2009-14 (KIP) lays down specific policies to streamline land acquisition.

The KIP states that:

- o Efforts will be made to identify and utilise government waste lands in different parts of the state for "employment generating industrial activities."
- o inventory of surplus and unused land available with PSUs, State Govt., ULBs and suitable private land will be made to create a Land Bank, enabling the State to offer ready to use land to investors. <sup>54</sup>
- o Need for a land acquisition policy "in order to speed up the process of land acquisition for the purpose of industries". <sup>55</sup>
- o Land policy should have a provision for land owners to partner the project, offering equity. Alternatively land owners will be offered adequate compensation based on the set guidelines. <sup>56</sup>
- o In cases of large extents of land, certain portions will be reserved for social infrastructure such as housing, schools etc. <sup>57</sup>

The KIP also promotes the use of Special Economic Zones.

#### Karnataka Tourism Policy 2009-14

Karnataka's Tourism Policy 2009-14 (KTP) has very limited mention of land issues and land development.

The KTP states the development of eco-tourism location with excess land available, presumably land banks. For the purpose of building wayside amenities, the Government will lease out available land as well as acquire and lease out where land is not readily available.

#### Special Economic Zone Policy

Under the Karnataka Special Economic Zone Policy land required for SEZs can be:

- o purchased from land owners;

- o Purchased under section 109 Karnataka Land Reforms Act, with approval of SHLCC. The Revenue Dept. can then facilitate the purchase of this land;
- o State Government can allot the land to SEZ from land acquired by them for industrial purposes, with approval from the SHLCC;
- o State Government may acquire the required land for the SEZ, with the approval of the SHLCC and transfer such land, as per the KIAD Act 1966.

### Land Bank

Karnataka has been very active in land banking.

The creation of a large land bank is seen by some as a response to Gujarat being favoured over Karnataka for Tata's Nano project, after the Singur protests lead to the project being unable to be carried out in West Bengal. <sup>58</sup> Reports state that because Karnataka did not have a large pool of land at hand, upon request by the Tata's, Gujarat was able to capitalise. <sup>59</sup> Therefore, the State Government has pursued a plan of keeping a large land bank to attract more industry investment.

Prior to the creation of Land Bank's in Karnataka, KIADB would essentially act as a facilitator and acquire lands on request. That being, clearly after the government has signed on to a project.

For the purposes of this study, we have identified 5 major districts in Karnataka where tourism is a major industry. These districts are: Bijapur, Bellary, Kodagu, Udupi, and Uttara Kannada.

Lands held by the Department of Tourism:

District	Number of sites	Extent (total) (acres)
Bellary	1	50
Bijapur	2	6.3
Udupi	3	52.24

Source: Karnataka Tourism Department, Land Bank Profiles

Private lands available for investment.

District	Number of sites	Extent (total) (acres)
Bellary	2	27.63
Bijapur	1	6.06
Kodagu	15	415.17
Udupi	7	76.54
Uttara Kannada	14	138.66

Source: Karnataka Tourism Department, Land Bank Profiles

### Public-Private Partnership in Karnataka

As one of the leading industrial states in India, Karnataka has history of public-private partnership models being used for industrial growth. A PPP Cell was created in 2007, as well as Single Window Clearance mechanisms. Part of the vision of the Karnataka's Industrial Policy 2009-14 is to "build strong Public-Private Partnerships in infrastructure development to achieve the twin objectives of high growth and equity".

## Tourism or Tourism related PPP Projects in the pipeline

Project Name	Status
Development of Heritage Park at vaccine institute, Belgaum	Procurement to start
3 Star Category hotel, Theme park, Restaurant, Organised Retail, Civic amenities at Jog Falls	Process of rebidding to start
Restaurants, Midway Plaza, Food courts, Organised Retail, Civic amenities at Agumbe	Process of rebidding to start
Development of Tourism Infrastructure Projects at Badami, Pattadakal, Aihole & Gokarna	Bidding to be undertaken; Land to be acquired by DOT
Golf Course at Thannir Bhavi	Approval obtained from KSCZMA and submitted for approval for NCZMA; Land transfer to Dept of tourism awaited.
Aquamarine park	Project Development stage
Development of International Convention Centre	To be bid out shortly

## Tourism or Tourism related PPP Projects under completed

Project Name	Status
Luxury Tourist Train Project	Procurement to start The bid process for <ul style="list-style-type: none"> <li>• selection of management partner completed and the agreement b/w KSTDC</li> <li>• and Management partner was entered into.</li> </ul>

## Land Acquisition for Tourism Projects

### Royal Orchid Hotels Ltd v G. Jayarama Reddy & Ors<sup>60</sup>

The Karnataka State Government had acquired 37 acres of land in the Bangalore South Taluk. The reading of the two notifications show that the public purpose for which the land was sought to be acquired was to establish Golf-cum-Hotel Resort near Bangalore Airport, Bangalore by the Corporation. The land was officially awarded in 1986. But, instead of utilising the acquired land for the purpose specified in the notifications or for any other public purpose, the land was transferred the same to private parties (real estate developers who sought to put up a group housing scheme)

The Supreme Court held:

*The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII.*



## Maharashtra

### Laws and Policies

As with other states, the Land Acquisition Act 1894 applies to land acquisitions by the state. Maharashtra also has the Maharashtra Industrial Development Corporation Act 1961 (MIDC Act).

The MIDC Act sets up the Maharashtra Industrial Development Corporation (MIDC) which has the following objectives:

To achieve balanced industrial development of Maharashtra with an emphasis on developing parts and underdeveloped parts of the State;  
Infrastructural development of each and every district of Maharashtra; and  
Facilitating entrepreneurs in setting up industries at various locations.

The MIDC is involved with land acquisitions and disposals, providing infrastructural facilities, and providing services.

The MIDC Act allows the MIDC to negotiate rates directly with farmers and landowners which aims to ensure that they are usually paid market rates. When the MIDC acquires land it is used for industrial purposes.

Land for industrial areas is acquired by the Government of Maharashtra under Chapter VI of the MIDC Act 1961 and handed over to the Corporation for further disposal. The Government is responsible for the payment of compensation for private land. The MIDC's role is to plan the area and dispose the land in suitable plots.

The state government is however considering giving land acquisition powers to the Maharashtra Tourism Development Corporation (MTDC).<sup>61</sup>

In a draft paper on Special Economic Zones in Maharashtra, Mujumdar states that for political reasons the Government of Maharashtra will often use the District Collectors office rather than the MIDC.<sup>62</sup> According to him, business interest have been able to make inroads into the "higher echelons" of the state machinery as well as the political circuits, but have been unable to tap into the "lower circuits" of state machinery and local politics.

*The route of land acquisition via the District Collector's Office sought not only to draw upon the state's power of the Eminent Domain but also to tap into the nodes of power and its networks in the lower rungs of the administrative machinery, for instance, at the taluka level (Land Records Office) and at the grampanchayat level (Talhati – the Land Records Officer, who has an intimate knowledge of land in his / her jurisdiction) This explains the emergence of several layers of informants, middle-men and touts, intermeshed in informal networks from within the state-machinery and the locality of the forty-five villages, whose local knowledge assisted the developer by providing information about lands that could be immediately procured, assisting the developer in determining the value of the land and directly brokering it. The developers also sought to use local informants, with the collusion of state officials, to misguide the public and political representatives on several occasions*

### Land Acquisition Policy

The Government of Maharashtra have indicated that they are drafting a Land Acquisition Policy, however there has been no draft released yet.<sup>63</sup>

### Tourism Policy

The Maharashtra Tourism Policy expresses the problem of non-availability of encumbrance-free land for the purpose of tourism. A potential investor therefore, has the choice of land in the various industrial areas developed by the MIDC. Because the MTDC does not have the power of land acquisition or a land bank, the Maharashtra Tourism Policy states a desire for "an investor friendly land policy for tourism on the lines of the industrial policy."

Under the Maharashtra Tourism Policy, if an investor approaches the MTDC with a viable project on a particular plot of land and undertakes to bear the cost of acquisition and escalation thereof, the MTDC will acquire such land through the Collector and lease the same to the private investor. 64

### Special Economic Zones.

Like the other states in this study, Maharashtra has a strong focus on Special Economic Zones in a bid to attract foreign investment. Maharashtra has a total of 206 proposed SEZs. Of these 206 SEZs, 64 are Notified, 104 have acquired Formal Approval and 38 have acquired In-Principle Approval. 65

The Government of Maharashtra implemented a Special Economic Zones Policy in 2001, four years prior to the Government of India's SEZ Act 2005.

A draft Maharashtra Special Economic Zones and Designated Areas Act, 2010 (SEZDA Act) has been in the works for a while. This Act is controversial as it plans to designate powers of local self-governance to SEZs and the further reduction of government responsibility over SEZs. Political hurdles have meant that the Maharashtra SEZDA Act has been delayed several times in its enactment, and it remains to be seen whether it will finally get passed.

Possibly the most recent attention has been for the Reliance-led Maha Mumbai Special Economic Zone in the Raigad district. Reliance sought to acquire 14,000 hectares of land. Local residents, mostly tribal, fisher folk and OBC Communities who inhabit the land opposed the land acquisitions. In February 2011, the Government of Maharashtra removed the reservation for SEZ on the land. 66 The agitation had led to only 13% of the land being able to be acquired by Reliance before its eventual end.

### Public Private Partnerships

The Tourism Policy of Maharashtra states that the model of PPP should be suitably applied to tourist destinations in the state, with the following rationale:

*The privatization policy will help tourism in the following respects –*

- α. It will develop the destination as a tourist centre and provide necessary amenities;
- β. It will help to preserve our heritage and culture which require considerable resources.
- χ. The private investor will work to promote the destination in order to recover his investment. This will boost marketing of the destinations in Maharashtra.

The Maharashtra finalised PPP Policy is still to be released.

Tourism based PPP Projects which are currently undertaken in Maharashtra are listed as follows:

Name of Project	Location	Govt Dept	Status
Modernization of Taraporevella Aquarium, Mumbai	Mumbai	Animal Husbandry Dairy & Fishery	Bidding
Conversion of IMS Vikrant into a Museum	Mumbai	Govt of Maharashtra	Bidding

Source: Govt of Maharashtra PPP Cell

### **Madhya Pradesh**

Madhya Pradesh has a long history of land acquisition for infrastructural or industrial purposes; most infamously, the Narmada Valley land acquisitions, displacements, and the resistance of villagers in the area.

## Laws and Policies

Current legislation governing land acquisition is the Land Acquisition Act 1894. In addition to the LAA 1894, there are state level land acquisition and resettlement policies – MP Land Revenue Code 1959, and the MP Resettlement Policy 2002.

Madhya Pradesh has amended provision of the LAA 1894 more than just procedurally. Madhya Pradesh has taken a more liberal approach to land acquisition, and includes provision of land for agriculture, for residential, business or industrial purposes.

Further to this, the following sector policies have relevance :

- o Madhya Pradesh Industrial Policy 2010
- o Madhya Pradesh draft PPP Policy
- o Madhya Pradesh Tourism Policy 2010

## Public Private Partnership in Madhya Pradesh

Almost all sector policies in MP encourage private sector participation in their respective sectors. Some even specify PPP as preferred mode of development.

It is understood that around 88 infrastructure projects have been taken up or initiated on PPP in the state with a definite increasing trend in recent times. It is seen that most of the PPP projects are from in the road and highway sector. This sector accounts for around half of the total value of PPP projects in the state. The breakdown of PPP projects by industry is show below, as well as targets for 2011-12. As can be seen Tourism is a very small percentage

The Draft PPP Policy for Madhya Pradesh (**Draft Policy**) is currently under consideration by the state Government.

Under the Draft Policy, the state Government is to make land available for PPP projects on standard terms and conditions as already practised by the Government when giving land to a Government agency for a development project. 67

## Madhya Pradesh Tourism Policy 2010

The Madhya Pradesh Tourism Policy 2010 (MP Tourism Policy) further emphasises the PPP and privatisation model, with guiding principle to set up an institutional mechanism to promote private investment, and the develop tourism through PPP.

Other guiding principles include:

- o Setting up an effective regulatory mechanism for sustainable tourism.
- o Provide reception, assistance, information, amenities, hygiene, security, and infrastructure for the tourists.
- o Adopt the principle of "First Conservation Later Tourism" for Cultural Heritage.
- o Make eco-tourism an effective tool to sensitise masses regarding environmental conservation.
- o Ensure active and coordinated participation of Government Departments, voluntary organisations, community and all other stakeholders of tourism sector.

Under the MP Tourism Policy, the land bank policy shall continue and rather than only leasing out land for 90 years, grant development rights for 30 years with a further 30 year renewable period.

## PPP in Madhya Pradesh

According to Government records, the following PPP Projects related to tourism, are currently in the pipeline in Madhya Pradesh.

Project	Location and Dept
Van Vihar Ph-II on 350 ha	Bhopal – Forest Department
Water-based Tourism activities on Indira Sagar Dam - I	Hanvantiya, Khandwa - Tourism Dept
Water-based Tourism activities on Indira Sagar Dam - II	Hanvantiya, Khandwa – Tourism Dept
Eco-tourism park at Arnia near Sonkatch	Arnia, Dist. Dewas - Forest Department
Eco-Tourism Park	Rewa- Forest Department

## Analysis

### Policy Drive

The various state policies and laws illustrate a clear policy drive towards the alienation of land from peasants and farmers, and towards allotment to industry, including the tourism industry.

In Orissa, for example, the Industrial Policy aims to create a business friendly environment and a Land Policy geared towards “vigorous implementation” of a “Land Bank Scheme for industrial growth”. The SEZ model is also used for tourism projects and for the acquisition of land. The PPP policy has a lack of guidance or criteria on how a project is identified as fit for PPP model. Therefore, several high end tourism projects such as the Shamuka Project in Puri fall under the umbrella of PPP. If the LARR Bill is enacted in its current form, PPP projects are considered as a public purpose by default, and PPP projects such as the Shamuka Project in Puri, will not require 80% Project Affected Person’s approval.

Orissa does not have a Tourism Policy yet, however other tourism policies as we have seen also fit in with the policy drive of land for industry. The Maharashtra Tourism Policy states a desire of “an investor friendly land policy for tourism on the lines of the industrial policy.” Orissa is currently earmarking a land bank policy which has been lobbied for by Industry. 68

### The LARR Bill: Some Positives and Negatives for Tourism Related Acquisitions

The reformulation of India’s laws on land acquisition, rehabilitation and resettlement is a huge opportunity for the struggles that are and have occurred over land. The LARR Bill unfortunately fails to deliver in defining “public purpose”. The Bill undermines the distinction between private and public interest in subtle ways, is “clothed within a seemingly liberal concession.” 69 It continues to frame the role of government as one of facilitation of land acquisition, leaving open land acquisitions by corporations for private interests.

### Challenging Acquisitions

A major weakness of the LARR Bill is in challenging an acquisition. Under section 11, any person with an interest in the land being acquired can object to the extent and choice of the acquisition, to the justification of public purpose, and to the findings of the SIA. A study by the International Land Coalition shows that local communities interviewed by the Coalition lamented about being merely informed of their displacement and not of the procedures leading to such a decision. This clearly violates rights, and the report recommends that there should be a complete moratorium on land acquisition unless the investment framework has undergone discussions and consultations with the communities involved. “Farmers must be made partners in the developmental process”.

Further to challenging an acquisition, the appeal process is heard by the Collector. The Collector forwards recommendations to the Government, and the Government finalises a decision. The Government is also the decision maker on whether the project meets public purpose requirements, and the location of the project, in the first place. This inevitably causes a conflict of interest. 70

These weaknesses in creating a truly democratic process in land acquisitions will mean that many tourism projects will leave out proper community involvement. The problem gets further complicated when

considering some recent tourism related acquisitions, where the Government has been accused of acting in haste, issuing notifications for acquisition well before the need for a project has been assessed. 71 This will inevitably lead to tourism development at the cost of people's rights, and lead to further agitation and conflict.

### Positive Features of the LARR

However, looking in a positive light, the LARR is still a massive improvement on the 1894 colonial legislation. For the first time, the government has brought together in law the related issues of land acquisition on the one hand and the rehabilitation and resettlement (R&R) of affected persons on the other. Until now, these two have been seen as separate. Under the Land Acquisition Act 1894, payment of cash compensation is considered adequate, full and fair consideration for the land that is taken away from an owner. There is no legal requirement that anyone should be rehabilitated. 72

As the LARR Bill is yet to be enacted, this presents more opportunities for lobbying, advocacy, and awareness on the various gaps still present in the Bill.

### Land Banking: The Myth of Unused Lands

Many State Governments are creating banks of 'unused' lands and wastelands. The Andhra Pradesh Government Order on land banks talks of "waste/barren/dry lands" being used. 73 Land not under cultivation is often termed wasteland, as it is not revenue generating, and taken over by the State. Such land included lands near villages that were traditionally a common resource available to the villagers for grazing and other purposes.

Unregulated tourism and diversion of natural resources for meeting tourism demands has caused negative impacts on the environment. Inevitably, local communities that are dependent for their livelihoods on commonly shared natural resources also experience hardships from depletion of the commons.

### Changed Purpose

Another issue with unused lands is that often the land has already been allotted to industry. For example, in Andhra Pradesh 4885 acres of unused industrial land which have been lying unutilised are being utilised as a land bank. 74 This leaves questions about the efficiency in the allocation of these lands to industry in first place. Acquisition and allocation should not be done in a trivial manner where land is acquired, causing displacement of local communities, only to find that the benefactors of the acquisition are not in need of the large amounts of land acquired.

A further issue is of the re-allocation of these lands, once re-possessed by the government. Clause 95 of LARR Bill, as well as the Royal Orchid Hotels case, makes it illegal for a change of purpose of land allocated. If land banks for tourism purposes are set up through using land which has been reclaimed from previous acquisitions for different purposes, this would be contravening the law under Royal Orchid Hotels and clause 95 of the LARR Bill.

### Pushing for equitable land banking

The impacts of land banks vary with how a government implements a land bank. Many countries, especially in the developed world, employ best practice guides in land bank policies. In one of the few studies of land banks in India, Acharya (1987) states that the land banks in Delhi by the Delhi Development Authority (DDA) have been a failure. Attributing the failure to problems experienced in the acquisition, disposal and development of land, Acharya states that given the lack of clear direction, process are cumbersome and inefficient. Although the DDA did state that they wanted to safeguard the interests of the poor and underprivileged, no specific targets were set. A later study revealed a disproportionate amount of redistribution to middle and high-income families.

The recent push for land bank in India has however been for promotion of private sector investment. Pushed by regional industry groups, such as the Hotel and Restaurant Association of Orissa, in these instances the Government goes past even being a facilitator to being a land broker/dealer for industry.

A way forward for land banking for tourism would be a clear policy initiative from the Central Government, that all State Government's policies should:

- a. Objectives of land banking should be narrow, and focussed, and the aims of Land Banking should be specific;
- b. The government should not acquire land without a specific project, merely to add to a land bank;
- c. Unused/waste/barren lands will only be placed in the land bank if they do not form part of the common property resources of a community;
- d. Unutilised lands from previous acquisitions will give previously displaced villagers first rights at reclaiming properties;
- e. There should be an ongoing commitment to equity, with community involvement in any land acquisition process, as well as R&R for acquisitions;
- f. People's livelihoods must not be disturbed. Necessary measures must be taken to ensure that they have adequate access to the forest, coastal areas, seas and other commons.

### Land Acquisitions for Tourism

Relative to other industrial acquisitions, tourism is relatively low, both in relation to projects being of smaller sizes and relative to other industries. The difficulty with this is that R&R provisions of the LARR will not apply for private acquisitions below 100 acres in rural areas, or below 50 acres in urban areas. The LARR Bill will require 80% Project Affected Persons approval for many of the projects. Since tourism projects tend to be much smaller than most other developmental projects, they would not be above 100 acres and therefore the consent of the communities will not be mandatory.

### Next Steps

Taking into account the comments and recommendations in this section, there is a need for further interventions and awareness to prevent further inequitable and unjust land acquisitions for tourism projects.

As the LARR Bill is still to be enacted, important interventions can still bring about change. Although it is unlikely that there would be any radical transformation of the LARR Bill, even minor changes can bring about positive impacts for communities. Therefore, it is important to network with the current land rights movements, to bring awareness on tourism related acquisitions. In particular, it would be important to stress some of the important points of tourism acquisitions today; such as land bank issues and the relatively smaller size of acquisitions as pointed out in this Paper.

Land banking is still in its infancy. State Governments have only in the last 5-6 years started to create land banks. It is however a growing practices, and as we have seen the tourism industry is taking steps in using land banks for tourism projects. State Policies for Land Banking are still forming, and it is important to try to bring awareness, intervene, and advocate in these early stages.

This Report has laid out the policies, laws, and many of the current tourism based projects under PPP and SEZ Models, as well as tourism based acquisitions occurring around the country.

The Paper has concentrated on high-level policy, and laws, as opposed to studying the impacts of these acquisitions at a grassroots level on communities. A study which looks into various cases of land acquisition for tourism projects, gathering first hand information on the impacts on locals, as well as the processes that are followed in reality, will provide a good indication of where further interventions can be made. In particular, it would be important to look at the impacts in these communities on food sovereignty, water sovereignty, and access to the commons.

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*This paper was researched and written by Birsha Ohdedar an intern with EQUATIONS*

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