

Oil and Gas exploration in Manipur; scrutinizing relevant legislations

Civil society consultation on “Oil and Gas Exploration”,
16th November 2013, Churachandpur, Manipur

The Manipur Hill Areas (Acquisition of Chiefs' Rights) Act, 1967

Salient Features:

- Placed limitations on the powers of the Chief
- Village authority replaced the traditional council under the Chief
- Hill territory was divided into circles and sub-divisions
- Constitution of circle authority above the village authority
- Authorised the government to acquire the rights, title and interest of chiefs in and over land in the hill areas of Manipur
- Chiefs were, however, to be compensated by taking the following points into consideration:
 - The number of land under the chiefs;
 - Total number of households within the chieftdom; and
 - Compensation either to be given in installments or in lump sum



The Manipur Hill Areas (Acquisition of Chiefs' Rights) Act, 1967- Contd

- The Act, though passed could not be implemented because of the objection from some chiefs and also no assent was given by the Chief Commissioner (Governor)

The Manipur Land Revenue and Land Reforms Act, 1960 (MLR & LR Act, 1960)

Salient Features:

- Enacted by the Parliament to consolidate and amend the law relating to land revenue in the State of Manipur
- Intends to bring about uniformity in distribution of land throughout the State
- Section 2 of the Act says, 'It extends to the whole of the State of Manipur except the hill areas thereof'
- According to Section 2(1) of the Act, hill area means such areas in the hill tracts of the State of Manipur as the State Government by notification in the official Gazette declared to be hill areas

The Manipur Land Revenue and Land Reforms Act, 1960 (MLR & LR Act, 1960)- Contd

- State Government under different notifications had notified 1161 villages as hill areas in the 5 (five) Hill Districts for the purpose of this Act
- Though Section 2, of the Act says that it does not apply to the hill areas of the State, it again says, 'Provided that the State Government may, by notification in the official Gazette, extend the whole or part or any section of this Act to any hill areas of Manipur also as may be specified in such notification'
- So far 89 villages of Churachandpur district and 14 villages each of Tamenglong and Senapati districts had also been covered by the Act

The Manipur Land Revenue and Land Reforms Act, 1960 (MLR & LR Act, 1960)- Contd

- Section 158 is important as it gives special protective provision of the Act on the transfer of land belonging to a tribal to non-tribal
- Section 158 of the Act: *“No transfer of land by a person who is a member of Scheduled tribes shall be valid unless the transfer is to another member of Schedule tribes; or Where the transfer is to another person who is not a member of any such tribes, it is made with the previous permission in writing of Deputy Commissioner provided that the Deputy Commissioner shall not give such permission unless he has secured the consent thereto of the District Council within whose jurisdiction the land lies; or the transfer is by way of mortgage to a co-operative society”*

The Manipur Land Revenue and Land Reforms Act, 1960 (MLR & LR Act, 1960)- Contd

- However, there is a **limitation** in Section 158.:
 - If the transfer is made by way of mortgage to a co-operative society, the consent of the District Council and written permission of the Deputy Commissioner is not required!
 - The co-operative society to whom the land is to be transferred is not clearly identified
 - Taking advantage of this exceptional provision, some valley based co-operative societies had lured tribals with a fat dividend to mortgage their land

The Manipur Land Revenue and Land Reforms Act, 1960 (MLR & LR Act, 1960)- Contd

- **Observation of the Law Research Institute of Guwahati High Court:**
- The Law Research Institute of Guwahati High Court observed that the extension of the Act to the selected hill villages had created many problems. It says:
- *“The extension of MLR & LR Act, 1960 to the villages inhabited by the Kuki tribes has created many problems besides that of annual **pat-tadars** but the customs relating to the land system of these villages are different’. The villagers were his tenants and they use to pay regular rents in kinds besides their presents’. Without abolishing the ownership rights of the chiefs, how could these be brought direct into contact with state Government? Yet, this was done wrongly in our view”*

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Salient Features:

- The State Government have to recognize and vest the forest rights and occupation in forest lands in forest dwelling scheduled tribes and other traditional forest dwellers who have been residing in forests for at 70-75 years as on 13th December, 2005 (Sec.2 (o))
- Ceiling of land being framed for tribals or forest dwellers as on December 13, 2005(Cut-off date), is subject to a maximum of 4 hectares
- Sec.1 (2): This Act extends to the whole of India except the State of Jammu and Kashmir

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006- Contd

- Sec.2 (c): Forest dwelling Scheduled Tribes means the members of community of Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bonafide livelihood needs and includes the Scheduled Tribe pastoralist communities
- Sec.2 (d): Forest land means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and National Park
- Sec.2 (p): **A “Village” means**
 - (i) A shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs); or

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006- Contd

- (ii) Any area referred to as a village in any state law relating to Panchayats other than the Scheduled Areas; or
- (iii) Forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
- (iv) In case of states where there are no Panchayats, the traditional village by whatever name called

➤ Sec. 3(1):

- Rights for conversion of Patta or leases or grants issued by any local authority or any state government on forest lands to titles
- Rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006- Contd

- Rights which are recognized under any state law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any States

➤ **Objectives of the Act:**

- i) To give rights to Scheduled Tribes and other traditional Forest Dwellers of land in their historical possession
- ii) To provide rights to Scheduled Tribes and other traditional forest dwellers to collect, use and dispose off minor forest produce
- iii) To provide rights to Scheduled Tribes and other Traditional Forest Dwellers on land used for Community purposes.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006- Contd

➤ **Summary of the Act:**

- **Use Rights:** to collect, use and dispose off minor forest produce (also including ownership), to grazing areas, to pastoralist routes, etc
- **Relief and development rights:** to rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection
- **Forest management rights:** to protect forests and wildlife

VILLAGE AUTHORITY & AUTONOMOUS DISTRICT COUNCIL ACT, 2011

Salient Features:

- The idea of proposed (*Village Authority in Hill Areas*), 2nd Amendment Act, 2011 is to introduce Panchayati Raj system in tribal areas for effective decentralized governance in NEI
- The proposed Acts is found to have negative impacts on tribal Chiefship, tribals' rights on lands and resources
- The proposed Manipur (Village Authority in Hill Areas), 2nd Amendment Act, is premature as it completely undermine traditional Chieftainship rights without giving any Constitutional safeguard to the traditional institution
- The proposed Manipur (Hill Areas) District Council, 4th Amendment, Act, 2011 failed to address the core issue of giving legislative, judiciary and financial power to the Autonomous District Council. The ADC will still be devoid of true power

ENVIRONMENT (PROTECTION) ACT, 1986

Salient Features:

- The Environment (Protection) Act, 1986 extends to the whole of India and it came into force on November 19, 1986
- It empowers the Central Government to establish authorities [under section 3(3)] charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country. The Act was last amended in 1991
- Environment (Protection) Act, 1986 is the most comprehensive act on the Indian statute book relating to environment protection
- It is a general legislation for the protection of environment. It was enacted under Article 253 of the Constitution

ENVIRONMENT (PROTECTION) ACT, 1986- Contd

- EPA, 1986 aims at protecting and improving the environment and prevention of hazards to human beings, other living creatures, plant and property
- The Central Government has the power to take all such measures as it deems necessary for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution such as:
 - Co-ordination of actions by the State Government officers and other authorities under this act or under any law
 - Planning and execution of nation- wide programmes for the prevention, control and abatement of environmental pollution
 - Laying down standards for the quality of environment in the various aspects

ENVIRONMENT (PROTECTION) ACT, 1986- Contd

- Laying down standards for the emission or discharge of environmental pollutants.
- Restriction of areas in which any industry, operation or process shall be carried out.
- Laying down procedures and safeguards for handling of hazardous substances.
- Examination of manufacturing processes, materials and substances which are likely to cause environmental protection.
- Carrying out and sponsoring investigations and research relating to problems of environmental pollution.
- Establishment and recognition of environmental laboratories.
- Such other matters as the Central Government may deem necessary of the purposes of securing effective implementation of this Act.

ENVIRONMENT (PROTECTION) ACT, 1986- Contd

- Leads to the formation of “Loss of Ecology (Prevention and Payment of Compensation) Authority”, Centrally constituted authority
- Sections 3, 4 and 5 of the EPA authorize the Central Govt. plenary powers to take all steps and measures as it deems necessary or expedient for the purposes of protecting and improving the quality of environment and for the purposes of preventing, controlling and abating environmental pollution
- One of the objectives of EPA is to provide for deterrent punishment to those who endanger human environment, safety and health

ENVIRONMENT (PROTECTION) ACT, 1986- Contd

- Sec 15 of the EPA provides that any person who fails to comply or contravenes any of the provisions of the Act, or the rules made or orders or directions issued under the act or rules, then for such failure or contravention, he shall be punishable:
 - With imprisonment for a term which may extend to 5 years,
 - With fine which may extend to one lakh rupees,
 - With both
- Sec 16 of EPA incorporates the principle of “vicarious liability” of the person in charge, Director, Manager, Secretary or other officer, for the offence if committed by the company
- Offences by Companies and Government Departments is punishable.



ENVIRONMENT (PROTECTION) ACT, 1986- Contd

- When any offence is committed by the company then the company as well as the person directly in charge of and responsible for the conduct of the business of the company shall be deemed to be liable to punishment under the Act.
- Who can make the Complaint?
 - The central govt. or any other authority by that govt. or,
 - Any person who has given notice of not less than 60 days of the alleged offence and of his intention to make complaint to the Central Govt. or the authorized officer.

Land Acquisition and Rehabilitation & Resettlement Bill 2011

➤ Positive features of the Bill:

- The introduction of a national law for R&R and compensation towards loss of livelihoods for the first time in the history of modern India
- An “Urgency Clause” evoked only for strategic purposes such as defence, cases of natural calamity and in ‘rarest of rare’ instances
- An offer of various R&R benefits in a package and monetary compensation including a large solatium
- The Bill is in compliance with many existing laws that protect the national minorities, such as Scheduled Castes and Scheduled Tribes as well as other vulnerable groups identified by government, such as religious and linguistic minorities, Other Backward Classes, etc

Land Acquisition and Rehabilitation & Resettlement Bill 2011- Contd

- There is a provision for return of the acquired land to original owner if not used within a stipulated time
- Important answers sought in the Social Impact Assessment (SIA) that is mandatory
- A multidisciplinary expert group assesses the SIA and examines what “public purpose” is served in the application for land acquisition
- The District Collector is to explore alternatives of land required for applicant projects
- There is to be no notification served to the land owners without consulting those to be affected
- The SIA lapses if notification is not issued within six months of date of expert appraisal of SIA

Land Acquisition and Rehabilitation & Resettlement Bill 2011- Contd

- Critique of the Bill;
 - It is clearly understood in the Bill that the priority of the state is to use land for industrialization and urbanization, and not for agriculture and food security purposes
 - A need for balance cited as a reason for the formulation of the new law. But this balance is seen as not between the need for ecological or food security and the need for industrialization
 - The ultimate end of land use is specified as for a “public purpose”, but the present function of the land as meeting the public purpose of food and ecological security is diluted as merely a matter of social concern

Land Acquisition and Rehabilitation & Resettlement Bill 2011- Contd

- The principle of free and prior informed consent, as understood in international law, is not affirmed and incorporated clearly in the Bill, and consultations are merely seen as a procedural step towards the inevitable acquisition. Moreover, in **Clause 3(za)(vii)**, government makes all the final decisions
- The state withdraws its power in many areas where private companies and entities come into play, while exerting more power in other areas. In this regard, there is a discriminatory of state authority application that does not treat the land-losers and livelihood losers fairly. Power has not been exerted where it is required, but in those spaces which makes the state more authoritative. This violates the principles of democratic governance, self-determination and rights

Land Acquisition and Rehabilitation & Resettlement Bill 2011- Contd

- In **Clause 3(b)**, the “affected area” is not clearly addressed because, often, the area adversely affected by a project is not limited to merely the project designated area in a DPR
- In **Clause 3(c)**, where the notion of “affected family” is introduced, the definition of “family” is unclear. There are, in law prevailing in India, two types of family, 1) the joint family, and 2) the nuclear family. However, in the Bill, the “affected family” is described differently and arbitrarily, not in accordance to law. Many members of a family who are particularly vulnerable, such as widows, the divorced daughter who returns to her natal home, women headed households and the elderly parents who are dependent on their off-spring/s are excluded

Land Acquisition and Rehabilitation & Resettlement Bill 2011- Contd

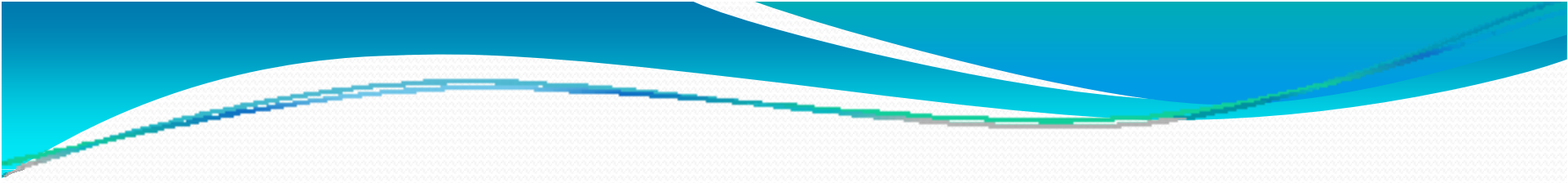
- In **Clause 3(d)**, “Agricultural land”, as described is narrow and economically oriented. The factors of production are not confined to merely the tilling of the land. It is also not clear how agricultural lands and their productivity relate economically and socially to wetland, rivers, etc
- In **Clause 3(m)**, the “Family” is very narrowly described
- In **Clause 3(p)**, “Land” is not comprehensively described according to understanding of differences across the whole country, and among different groups and communities. It should include resources that are both above and below the earth surface. Forest lands should be defined appropriately; so also rivers, wetlands, and community lands
- In **Clause 3(r)**, the concept of “Landless” is not applicable in the North Eastern Region of India

Land Acquisition and Rehabilitation & Resettlement Bill 2011- Contd

- In **Clause 3(s)**, the definition of “Land owner” is understood differently and the Bill’s definition is not applicable in our region
- In **Clause 3(t)**, the “Marginal farmer” is defined merely from the perspective of an area of land holding. This is clearly against the interests of farmers who do not hold the small areas of land they till
- In **Clause 3(u)**, “Market Value” is defined as such that it will revive the *zamindari* (feudal system of land ownership) system
- In **Clause 4**, “SIA” should be an assessment of the reality existing before land is acquired, and not just the impacts expected. It should also include assessment of socio-economic, environment, ecological, spiritual, cultural, educational, gender, and inter-generational situations existing

Land Acquisition and Rehabilitation & Resettlement Bill 2011-Contd

- In **Clause 5**, “Public Hearing”, as an integral part of the land acquisition process, should be clearly elaborated in terms of its aims, objectives, methods, process and mandate in the decisions before other acquisition and R&R related processes are commenced. For example, there is no guideline for a quorum required for a public hearing nor a time limit set for the hearing to be held
- In **Clauses 7 & 8**, the participation of women is not mandatory in the Bill. Nor are representatives decided and nominated by those to be affected, together with indigenous organisations and traditional bodies, included in the SIA processes



Finally.....

THANK YOU!!!!