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EDITORIAL NOTE

The monsoon session of the Parliament this year has been touted to be the harbinger of social reforms, as it witnessed the passing of several landmark legislations in quick succession. Noteworthy in this regard are legislations relating to food security, land acquisition and eradication of manual scavenging. The Parliament also passed a law codifying the rights and protecting the livelihood of street vendors, which is a very crucial legislation in the informal labour sector. What needs to be examined is whether these new enactments actually take a step forward by deftly addressing these crucial socio-economic issues or are only half-hearted attempts on the part of the government. In this context, this note seeks to undertake an analysis of the laws relating to land acquisition and food security.

On September 6, 2013, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Land Acquisition Act, 2013'), received Presidential assent, thereby overhauling the existing framework for land acquisition. This new law has been introduced in response to the historic injustice meted out to land owners due to forced acquisition; and the opacity and distortion in acquisition processes under the Land Acquisition Act, 1984. Given its importance to the country's industrialization and urbanisation initiatives, as well as the need to address the requirements of those whose livelihoods are dependent on such land, this note aims to analyse whether the recently passed law strikes the right balance.

It must be noted that the Land Acquisition Act, 2013 is a work of many years, as the first draft of this legislation was made way back in 2007, and since then there have been several debates and revisions to shape the Act in its present form. The Preamble to this law explains its objective to establish a framework for a participative, informed and transparent mechanism for land acquisition. The new law is comprehensive in nature as it lays down an elaborate acquisition architecture in place, introducing numerous new procedures such as the consent requirement; Social Impact Assessment ('SIA'); exceptions for Scheduled Areas etc. as well as considerably reconstructing existing provisions such as the urgency clause; the definition of 'public purpose' etc. In this note, we restrict our analysis to four very crucial aspects of the new law: 1) The land acquisition process, focussing on the consent mechanism; 2) The framework for compensation; 3) The Rehabilitation and Resettlement ('R&R') entitlements; and 4) Impact of the new law on the industry.

In its 120 years of existence, the Land Acquisition Act, 1894 helped institutionalize involuntary acquisition, with little regard to the rights of those who were dispossessed of their lands, bereft of their livelihood, security and community. The lack of an effective consultative process under this colonial

legislation was reflective of the broader premise backing the entire law on land acquisition then, which was based on the doctrine of eminent domain. The tone of the legislation assumed a priority to the requirements of the State for the public good, which would always override the interests of the landowners, and treated them as unfortunate ‘victims of development’.¹ This could seemingly be deciphered from the Statement of Objects and Reasons of the Land Acquisition (Amendment) Act, 1984 which referred to the ‘sacrifices’ of the affected population who were ‘*unavoidably*’ to be deprived of their property rights for the larger interests of the community.

The Land Acquisition Act, 2013 attempts to redeem this skewed model of development by attempting to make the land acquisition procedure more facilitative and consultative. It introduces a mandatory requirement of ‘consent’ whereby all projects require the prior consent of 80 per cent of land owners in the case of private companies and 70 per cent in the case of public private partnerships.² While this could be seen as a radical and welcome inclusion, one must note that differential treatment is accorded to acquisitions by public companies. For such acquisitions, there is no requirement of consent of landowners, which is indicative of the half-hearted attempt of the government to account for the rights of those who are involuntarily deprived of their land.³

Further, the provision requires consent to be obtained from only ‘land owners’, and excludes ‘project affected people’ such as agricultural labourers and sharecroppers from the purview of the consent mandate. It must be noted that the earlier versions of the Act adopted a more inclusive approach by extending the requirement of consent to project affected people, including landless labourers and artisans.⁴ The neglect of the law in this regard to other stakeholders is regressive and fails to extend protection to other groups whose livelihood is dependent on land that is proposed to be acquired.

At the level of implementation as well, the provision for mandatory prior consent faces uncertainties and lapses. *Firstly*, while the Land Acquisition Act, 2013 lays down the requirement and threshold for consent, it fails to delineate the process by which such consent can be obtained and is silent on the manner of negotiations. This is particularly problematic for large infrastructure projects, which require multiple parcels of land, and hence consent from a large population. Since the law leaves scope for flexibility for states to formulate their own rules in this regard, the policy at the state level towards land acquisition is likely to become a key variable in capital investment decisions.⁵ *Secondly*, the

¹ Usha Ramanathan, *Land Acquisition, Eminent Domain and the 2011 Bill*, 47 (44-45) EPW 10 (2011).

² Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 2(2)(b)(i) and (ii).

³ K. Sukumaran, *The Saga of Land Acquisition*, THE HINDU September 6, 2013, available at <http://www.thehindu.com/features/homes-and-gardens/the-saga-of-land-acquisition/article5100915.ece> (Last visited on January 5, 2014).

⁴ Land Acquisition, Rehabilitation and Resettlement Bill, 2011, § 3 (za).

⁵ ICRA Credit Rating Feature, *Impact Analysis: New Land Acquisition Bill*, September, 2013, available at <http://icra.in/Files/ticker/new%20land%20acquisition%20bill.pdf> (Last visited on

percentage set for consent ignores the fact that land titles in our country are not clearly documented. Owing to inaccuracies of land records, most times a certain percentage of the population is not traceable; but the high threshold prescribed does not leave enough margin to accommodate such inaccuracies. This can serve as a major obstacle for large-scale acquisitions and is posed to considerably deter the industry from such investments.

One of the major pitfalls under the Land Acquisition Act, 1894 was its antiquated approach to compensation which was extremely meagre, and more importantly very poorly administered. The lack of adequate compensation was the trigger for most vehement oppositions to land acquisitions by land owners and users. In this regard, the Land Acquisition Act, 2013 not only increases the quantum of compensation, but also widens its ambit by accounting for those whose livelihood is dependent on the land, and also elaborates upon a sophisticated manner of awarding compensation. Compensation for the land acquired is based on the market value, which is computed on the basis of reported transactions during three years preceding the date of proposed acquisition. This value is determined as the higher among: (a) value specified for stamp duty, and (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or (c) consented amount of compensation as agreed upon in case of acquisition of lands for private companies or for public private partnership projects.⁶ This amount is further doubled in case of rural areas.⁷ Further, a solatium equivalent to one hundred percent of the market value is added, to ameliorate the pain of forcible acquisition.⁸ This is substantial compared to the Land Acquisition Act, 1894, where the solatium to be awarded was tagged at thirty percent.⁹

While the mandate for compensation under the new law seems like a drastic improvement over its earlier counterpart, many have critiqued this mandate on the grounds that it lacks sound economic reasoning, however well-intentioned. This criticism stems from the very rejection of the use of market value of the land as the basis for determining compensation. It is argued that given the operation of land markets in India, market price is not an adequate anchor for compensation,¹⁰ and the mark-up of doubling the price in rural areas has been termed as arbitrary and without any justified backing. Most importantly, the adoption of the market price that would form the basis of a voluntary negotiations and sale of land to forced acquisition has been critiqued as fundamentally flawed. Land is deemed not to be a tangible attribute that can be objectively measured; rather it is a subjective quantity that must be valued according to its owner.¹¹

January 5, 2014).

⁶ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 26(1).

⁷ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 26(2) read with Schedule I.

⁸ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 30.

⁹ Land Acquisition Act, 1894, § 23(2).

¹⁰ Maitreesh Ghatak & Parikshit Ghosh, *The Land Acquisition Bill: A Critique and a Proposal*, 47(41) EPW 65-66 (2011).

¹¹ *Ibid.*

Hence, the major criticism against valuing land as a commodity is that it does not encapsulate its value as a source of livelihood.¹²

From the perspective of the industry, the high compensation rate that could go up to four times the market value of the land in rural areas, and twice in urban areas, has been seen as a major setback to the extent that investors are re-thinking the viability of their projects. The only positive attribute for the industry, as noted by India Inc., is that the seemingly highly and assured compensation package is likely to incentivize consent of the land owners which is mandatorily required (as elucidated above).

An important consideration with respect to compensation is that transactions on the proposed land to be acquired are to be frozen from the date of issue of the preliminary notification under the provisions of the Land Acquisition Act, 2013.¹³ This is done to prevent sale of land just before the acquisition which could drive up prices. However, the possibility of land acquisition would be known from the time of the SIA process, implying that there could be sale of different parcels of land in the vicinity from the time of the SIA till the issue of the preliminary notification. Transactions on the land during this intervening period could seriously affect its value, leaving scope for strategic manipulation.¹⁴

As the very name of the legislation indicates, one of the most landmark features of the Land Acquisition Act, 2013 is that it proposes a unified framework for acquisition of land and consequent rehabilitation mechanisms, in contrast with the earlier regime where R&R was governed under the policy framework.¹⁵ It emphasizes on monetary benefits in the form of subsistence grants, a one-time resettlement allowance and transportation grants.¹⁶ It also introduces non-monetary benefits in the form of provision of housing units in case of displacement and mandatory employment opportunities.¹⁷ The law also puts in place a very important safeguard by stating that no one shall be dispossessed until all payments are made and alternative sites for R&R have been prepared.¹⁸ This goes a long way in adding credibility and legitimacy to the framework of R&R under the new law.

Further, the Act establishes a robust legal framework for facilitating the disbursement of R&R benefits. It creates a Land Acquisition and Rehabilitation

¹² Nihal Joseph & Shrinidhi Rao, *The Land Acquisition Bill, 2011: One Step Forward and Two Steps Back*, 5 NUJS L. Rev. 245 (2012).

¹³ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 11(4).

¹⁴ Ram Singh, *New Land Bill: A Threat to Growth Prospects of the States*, THE ECONOMIC TIMES September 25, 2013, available at http://articles.economictimes.indiatimes.com/2013-09-25/news/42394603_1_resettlement-bill-acquisition-process-rehabilitation-and-resettlement (Last visited on January 6, 2014).

¹⁵ Prior to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, rehabilitation for forced acquisitions was governed under the National Rehabilitation and Resettlement Policy, 2007.

¹⁶ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 31 read with Schedule II.

¹⁷ *Ibid.*

¹⁸ *Id.*, § 38.

and Resettlement Authority at the centre and the state levels to settle disputes and grievances of the parties. This Authority is supplemented by Rehabilitation and Resettlement Commissioner, the Collector and the Administrator, each of whom have clearly defined roles. The distribution of power among these authorities can make the acquisition process more structured and refined, as opposed to the Land Acquisition Act, 1894 which displayed concentration of power in the hands of Collector. However, it is also argued that creation of so many levels poses the threat of bureaucracy creeping in.¹⁹ Thus, only the implementation of these provisions will determine the efficacy of the R&R framework under the new law.

What is also very unique to this law is that the legislation extends the applicability of R&R in cases where large tracts of land are acquired even through private negotiations.²⁰ While the industry strongly opposed this provision as an unwanted burden on voluntary sale-purchase of land, the intention behind such extension is appreciable. For mass development projects where the purchase of land is voluntary, but the area of land purchased is beyond the prescribed limit, the persons affected are entitled to the protection of R&R entitlements to ensure a sustained livelihood.

It is anticipated that the Land Acquisition Act, 2013 with its extensive provisions on compensation and R&R as explained above, is likely to push up the cost of acquiring land by 3.5 times its cost under the earlier regime, making large industrial and infrastructure projects unviable and raising overall costs in the economy.²¹ From the perspective of the industry, India Inc. has termed the new law as ‘a retrograde step’²² that would prove as a major setback to the country’s development projects. At a time where major projects are stalled and India’s global competitiveness is eroding, the industry was anticipating a more facilitative land acquisition process to restore investor sentiments.²³ However, with the multi-fold increase in project cost, severe lengthening of the project cycle, provisions on retrospective effect etc., the Land Acquisition Act, 2013 has elicited severe angst from India Inc.

¹⁹ Niranjan Sahoo, *Decoding the Land Acquisition Bill*, August 31, 2013, available at <http://orfonline.org/cms/sites/orfonline/modules/analysis/AnalysisDetail.html?cmaid=56375&mmacmaid=56376> (Last visited on January 5, 2014).

²⁰ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 2(3).

²¹ PTI, *Land Acquisition Cost May Go up to 3.5 Times: India Inc.*, THE ECONOMIC TIMES August 29, 2013, available at http://articles.economictimes.indiatimes.com/2013-08-29/news/41582557_1_resettlement-rehabilitation-land-acquisition-bill-unutilised-land (Last visited on January 5, 2014).

²² PTI, *Land Bill, A Retrograde Step: Industry*, THE ECONOMIC TIMES August 30, 2013, available at http://articles.economictimes.indiatimes.com/2013-08-30/news/41619002_1_land-acquisition-bill-acquiring-land-land-owners (Last visited on January 6, 2014).

²³ TNN, *Land Bill is a Retrograde Measure, Says India Inc.*, THE TIMES OF INDIA August 31, 2013, available at <http://timesofindia.indiatimes.com/business/india-business/Land-bill-is-a-retrograde-measure-says-India-Inc/articleshow/22177234.cms> (Last visited on January 5, 2014).

Another aspect while assessing the consequences of the new law from the perspective of the industry is its impact on project planning and implementation. According to the legislation, if an acquired land which is transferred to a person for a consideration, is left unutilised for a period of 5 years from the date on which it was acquired, it shall be returned to the Land Bank or the appropriate government.²⁴ Further, the Act prohibits any change in purpose for which the land was originally acquired²⁵ and limits the transfer of ownership of such land.²⁶ Such provisions will force companies to reassess project viability, rationalise land requirements and undertake planned development. This is appreciated as a welcome change to combat wastage of land which has been frequently witnessed with many projects, and ensures acquisition of only the minimum amount of land for the proposed project. Thus, we see that while the new law is significant in many aspects, much is still left to our imagination. On this note, we shall now undertake a critical analysis of the recently passed landmark legislation on food security.

On September 10, 2013, the National Food Security Act (‘NFSA’) received the President’s assent, thereby sealing the debate, at least momentarily, with respect to the legislative framework governing food security. Interestingly, the law not only provides for a statutory basis for the right to food, but also defines the same through quantitative prescriptions. A plain reading of § 3 would indicate that the term ‘eligible households’ under NFSA refers to the ‘priority households’ identified under § 10(1) and the ‘households covered under the Antyodaya Yojana Scheme’, each entitled to 5 kgs of food grains per person per month and 35 kgs of food grains per household (as opposed to persons) per month respectively at the prescribed rates.

In this context, instead of undertaking a section wise analysis of the NFSA, this note shall focus on two crucial aspects of the law: 1) The concept of ‘food security’ under the NFSA and 2) The process of identification of beneficiaries under NFSA.

First, looking at the concept of ‘food security’, the World Food Summit of 1996 defined food security as “access to sufficient, safe, nutritious food to maintain a healthy and active life” at all times by all persons.²⁷ The four important parameters to determine food security are “food availability, food access and food use”²⁸ and “stability” of these three factors.²⁹ The FAO indicators provide further clarity by measuring availability in terms of average diet energy supply, average supply of proteins etc.; physical access in terms of road/

²⁴ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 101.

²⁵ *Id.*, § 99.

²⁶ *Id.*, §100.

²⁷ World Health Organisation, *Food Security*, available at <http://www.who.int/trade/glossary/story028/en/> (Last visited on January 1, 2014).

²⁸ *Id.*; see World Food Programme, *What is Food Security?*, available at <https://www.wfp.org/node/359289> (Last visited on January 1, 2014).

²⁹ *An Introduction to the Basic Concepts of Food Security*, available at <http://www.fao.org/docrep/013/al936e/al936e00.pdf> (Last visited on January 2, 2014).

rail density; economic access in terms of domestic food price level index; utilization in terms of access to improved water resources among various other determinants.³⁰ The CESCR General Comment No. 12 states that the right to food is realized “when every man...has physical and economic access at all times to adequate food...”. It goes further to state that the right to food would not be interpreted restrictively to equate it only to a minimum package of calories, proteins and other specific nutrients. As it has been argued, under General Comment No. 12, the state’s duty extends to the creation of such external conditions that enable people to feed themselves, rather than merely providing for food.³¹

The recognition of the above mentioned factors reflect that ‘food security’ does not merely end with ‘food availability’. This shows that the understanding of ‘food security’ focuses its attention on identifying and strengthening individual capabilities; a human rights approach advocated by Amartya Sen.³²

What merits attention here is the nature of ‘food security’, which should be seen in light of the content of the ‘right to food’. While determining what definition of ‘food security’ we subscribe to, it would be important to clarify if our construction of the ‘right to food’ only means *freedom from hunger* or does it also amount to right to ‘adequate food’(thereby involving a qualitative assessment regarding safety, quality and cultural acceptability of the food)?³³ With this in mind, we shall analyze the treatment given to the concept of ‘food security’ under the NFSA.

§ 2(6) of the NFSA defines ‘food security’ to mean “supply of entitled quantity of food grains and meal specified under Chapter II”. The term ‘mean’ indicates that the concept of food security under the Act is exhaustive. While this may indicate an extremely narrow approach for ensuring food security, several other provisions of the Act indicate otherwise. As an example, in addition to the ‘priority households’, the Act recognizes special priority groups like pregnant mothers, children up to the age of fourteen years and malnourished children for the purpose of providing ‘free meals’ as per §§ 4,5 and 6 respectively. § 30 makes provision for ‘advancement of food security’ by focusing on ‘vulnerable groups’ in remote, hilly and tribal areas. These provisions attain significance as the law recognizes a distinct group of persons facing significant impediments while accessing food. Next, § 12 provides for reforms with respect to the PDS system, which includes, doorstep delivery of food grains, usage of information and communication technology to avoid diversion of food grains and full transparency of records, thereby recognizing some of the reformatory measures ordered by the

³⁰ FAO, *Food Security Indicators*, available at <http://www.fao.org/economic/ess/ess-fs/fs-data/en/#.UsW-PPQW3gw> (Last visited on January 2, 2014).

³¹ Karen Kong, *The Right to Food for All: A Right Based Approach to Hunger and Social Inequality*, 32 Suffolk Transnat’l L. Rev. 525 2008-2009.

³² See Francesco Burchi & Pasquale De Muro, *A Human Development and Capability Approach to Food Security: Conceptual Framework and Informational Basis* (Working Paper UNDP, February 2012).

³³ Donald E. Buckingham, *A Recipe for Change: Towards an Integrated Approach to Food under International Law*, 6 Pace Int’l L. Rev. 285 1994 (Discussing the difference between ‘freedom from hunger’ and ‘right to adequate food’).

Supreme Court in its interim orders in *PUCL v. Union of India*.³⁴ §15 provides for the setting up of a grievance redressal mechanism, though the efficacy of the same would depend upon its implementation. Moreover, Schedule III also makes provisions for revitalization of agriculture, procurement, storage etc., which are important for ensuring availability of food grains. Significantly, Schedule III recognizes the importance of access of persons to sanitation, safe drinking water, health care, education for girls etc. This shows that several provisions of the Act confirm to a broader understanding of ‘food security’, thereby formulating an institutional framework that is important in the context of food security.

However, § 12(2) (h) also provides for the introduction of schemes such as ‘cash transfers’ (also mentioned under § 8), ‘food coupons’ etc. which raise different issues altogether in the context of food security. For example, one of the main criticisms of cash transfer is that the beneficiaries may expend the money received on items other than food, thereby underscoring the provision for food security.³⁵ It remains to be seen the manner in which the introduction of such schemes would affect the Indian approach to food security.

The next issue that requires attention is the method used for the identification of beneficiaries. Subject to the requirement that the entitlements shall extend upto 75% of the rural areas and 50% of the urban areas, the Central Government shall determine the extent of coverage for each state using the NSSO Household Consumption Survey data.³⁶ While the Planning Commission had communicated its resolve to not use ‘poverty estimates’ (based on the monthly expenditure of households) to cap beneficiaries for food entitlements,³⁷ the method used by the central government to fix the percentage of beneficiaries in each state³⁸ may negate the benefits derived from non-usage of the Planning Commission’s poverty estimates. The resultant effect of such exercise would be to cap the beneficiaries in each state using the contentious method of consumption expenditure, thereby fixing the number of poor to be identified by the state. Moreover, the fixed limits of coverage can restrict the aid given to those urban areas which may have a larger population of the urban poor, thereby exceeding the 50% limit. States like Tamil Nadu³⁹ and Odisha,⁴⁰ have already expressed their reservations in this context.

³⁴ Supreme Court Orders on the Right to Food: A Tool For Action, October 2005.

³⁵ Mohammad Ali, *People’s Movements Say No to Cash Transfers, Yes to PDS*, THE HINDU, available at <http://www.thehindu.com/news/cities/Delhi/peoples-movements-say-no-to-cash-transfer-yes-to-pds/article4145922.ece> (Last visited on January 2, 2014).

³⁶ Department of Food and Public Distribution, available at <http://dfpd.nic.in/?q=node/999> (Last visited on January 2, 2014).

³⁷ Press Conference, Statement of Shri Montek Singh Ahluwalia, Deputy Chairman, Planning Commission, October 3, 2011, available at http://planningcommission.nic.in/aboutus/speech/spemsa/pr_dch0309.pdf (Last visited on January 2, 2014).

³⁸ See Ministry of Rural Development, *Socio Economic and Caste Census 2011 Begins*, available at <http://pib.nic.in/newsite/erelease.aspx?relid=72924> (Last visited on January 2, 2014).

³⁹ *State Reiterates Doubts over Food Security Act*, THE HINDU October 2, 2013, available at <http://www.thehindu.com/news/national/tamil-nadu/state-reiterates-doubts-over-food-security-act/article5190784.ece> (Last visited on January 2, 2014).

⁴⁰ Standing Committee on Food, Consumer Affairs and Public Distribution, The National Food Security Bill, 2011, Twenty Seventh Report, 26.

Subject to the Central Government's prescription, the onus to identify the beneficiaries lies with the state government, without the Act laying down any specific criteria or principles for the purpose of identification of such priority households. This is similar to the provisions under the PDS (Control) Order, 2001 which also left the task of identifying beneficiaries with the state without providing any statutory guidance. However, reliance was placed upon the BPL census which is carried out for the identification of beneficiaries in each state.

The process of identification calls for a great need of caution as it is feared to be replete with errors of inclusion and exclusion. The NFSA seeks to continue with the system of targeted public distribution system as opposed to the universalization of entitlements (that is prevalent in states like Tamil Nadu and is advocated by many on the grounds that it reduces errors of exclusion). However, instead of identifying 'BPL' and 'APL' categories which was being done under the TPDS, the NFSA only provides for the identification of 'priority groups'. The Standing Committee recommended the determination of exclusion of 25% of population in rural areas and 50% in urban areas and uniformly entitling the rest of the population to the benefits under the NFSA.⁴¹ However, this proposal hasn't been accepted.

Reports indicate that the beneficiaries shall be identified on the basis of the Socio-Economic Caste Census, 2011 ('SECC, 2011').⁴² The SECC was proposed for the purposes of carrying out the BPL census for the twelfth five year plan.⁴³ The N. C. Saxena Committee ('Saxena Committee') was constituted for the same which recommended a three step approach: *First*, automatic exclusion of certain persons; *second*, automatic inclusion of the poorest of the poor; and *third*, score based assessment for the rest of the population.

The exclusion criteria adopted by the SECC is extensive, with significant additions made to those suggested by the Saxena Committee. The criteria for exclusion primarily focuses on the economic strength of the household as reflected through ownership of productive assets (ownership of three or more tractors, irrigated land etc.) and means of livelihood (persons paying income taxes, employed in government services etc). With respect to the criteria for inclusion, the Saxena Committee recognized factors other than economic conditions, such as caste, gender etc. which affect the livelihood of individuals. The consideration of such factors is conspicuously absent while identifying the criteria for automatic exclusion. The SECC's criteria for inclusion do not consider households headed

⁴¹ *Id.*, 41.

⁴² Press Information Bureau, Ministry of Consumer Affairs, Food & Public Distribution, May 2, 2013, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=95441> (Last visited on January 2, 2014); Gargi Parsai, *Caste Census Data to be Used to Identify Beneficiaries of Food Security Bill*, July 21, 2013, available at <http://www.thehindu.com/news/national/caste-census-data-to-be-used-to-identify-beneficiaries-of-food-security-bill/article4935890.ece> (Last visited on January 2, 2014); *Act Fast on Caste Census, Centre Tells States*, July 23, 2013, available at http://www.business-standard.com/article/politics/act-fast-on-caste-census-centre-tells-states-113072300270_1.html (Last visited on January 2, 2014).

⁴³ *Poverty Studies*, available at <http://www.rural.nic.in/sites/downloads/programmes-schemes/Poverty%20Studies.pdf> (Last visited on January 2, 2014).

by a minor or a single woman, and households where the disabled member is the bread earner, which were recommended by the Saxena Committee. These factors have been used along with four other criteria to constitute the ‘deprivation indicators’. What is significant from the perspective of the NFSA is that there is no mention of the food intake, access to water/sanitation etc. of families, which was considered in the BPL census 2002-07.

Not surprisingly, the SECC has faced criticism from several quarters. Jean Drèze has demonstrated various cases wherein socially and economically marginalized groups may not be included in the BPL census.⁴⁴ However, from the perspective of food security, this method can be a problematic on several fronts.

Firstly, the proposed SECC is to be carried out with respect to each household as opposed to individual persons. However, the NFSA seeks to identify ‘individual persons’ as beneficiaries. Hence, a method used to identify the vulnerabilities of every individual (as opposed to the household) would be more helpful as it would capture the intra family disparities in accessing food and include such persons within the ambit of the NFSA. *Secondly*, the BPL census aims to identify households for the purposes of determining the beneficiaries under various government schemes. Thus, this census is not customized for any particular scheme, including the entitlements under the NFSA. This can still lead to errors of exclusion. As explained above, the concept of food security is multifaceted, which includes not only the element of availability but also access, utilization and security, which the SECC fails to capture. Thus, an automatically excluded household with a family member earning more than ₹10,000 per month or families scoring low on the ‘deprivation indicators’, may still be vulnerable to food insecurity if it faces difficulties in accessing or utilizing the food on account of poor health facilities, sanitation etc. Studies have also advocated an approach that identifies future vulnerabilities of persons to food insecurity,⁴⁵ which the SECC does not account for. Thus, the identification of the beneficiaries under the NFSA through the SECC remains problematic.

While both the legislations discussed above have elicited considerable criticism from various stakeholders and continue to be subjects of heated debate, it is only the actual implementation that will be determinative of their efficacy. Only time will testify whether these laws prove, in fact, to be progressive and achieve their stated goals of inclusive development for the country.

⁴⁴ Jean Drèze, *Kaun Banega Scorepati?*, November 28, 2011, available at http://www.righttofoodindia.org/links/bpl_census_2011.html (Last visited on January 2, 2014).

⁴⁵ *HSF and Household Vulnerability to Food Insecurity: The Concept*, available at http://www.ifad.org/hfs/thematic/guatemala/guat_2.htm (Last visited on January 2, 2014).

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