Land acquisition refers to the process by which the government forcibly acquires private property for public purpose without the consent of the land owner, which is different from a market purchase of land. Of various pretexts used by the Govt., two main instruments are used for this purpose. One is the set of forest-related laws such as the Indian Forest Act, 1927, the Forest Conservation Act, 1980, the Wildlife (Protection) Act, 1972. The other is the gamut of laws for acquisition of land. The Forest Act is instrumental in establishing proprietary rights of the government over forest land and control over forest produce. The enforcement of its provisions leads to the denial of rights to people through processes prescribed for establishing a claim and extensive powers vested in the forest officials to adjudicate on its validity. Other forest laws have the effect of displacing forest dwelling communities from their habitat and cultivable land, imposing restrictions on their movement and curtailing their access to forest-resources. The laws on acquisition deprive them of land which is their only source of livelihood. A large number of such laws have been enacted which include both the central and state laws. These laws have various provisions relating to the process of acquisition and entitlements of the affected persons. Of them, the Land Acquisition Act, 1894 of the central government is the most widely used for the purpose of land acquisition. The dimensions of this law (other acquisition laws share broadly the same framework) which have adverse implications for those affected by its use relate to its (a) conceptual frame, (b) norms of applicability, (c) range of entitlements, (d) mode of participation, and (e) design.

Origin, History and Basic principles of the Land Acquisition act 1894

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The first law framed in India for acquisition of immovable property for public works and purposes was contained in the Bengal Regulation I of 1824. The rules empowered the Government to acquire immovable property at a fair and reasonable price for construction of roads, canals or other public purposes. Some lands were acquired in Calcutta for public purposes, even though there was no proper legislation to that effect. In order to remove the legal complications, Act I of 1850 was enacted with a view to confirm the title to the lands acquired for public purpose. Act XLII of 1850 (Bengal) declared that Railways were public works within the meaning of Regulation and was accordingly brought in to enable the provisions of Regulation I of 1824 to be used for acquiring lands for the construction of Railways.

In the Bombay Presidency, Building Act XXVIII of 1839 provided for acquiring land for public purposes in Bombay and Colaba and the compensation therefore to be determined by a jury of twelve. That Act was extended by Act XVII of 1850 for taking land for Railway purposes in the Presidency. Act XX of 1852 (Madras) provided for acquisition of land for public works generally in Madras Presidency, the compensation as per the Act was to be settled by the Collector or if the parties disputed it, by arbitration. Simultaneously Act XLII of 1850 (Bengal) was extended to the Presidency. Both these Acts were extended by Act I of 1854 for acquisition of land in Madras town.

All these enactments were repealed by Act VI of 1857 which enacted one general law for the acquisition of land for public purpose in all the territories under the East India Company. By this Act the valuation of the land was to be fixed by the Collector or, if the parties disputed it, by arbitration and the apportionment of share might be made by the arbitrator or left to suits in civil courts. The Act VI of 1857 was further amended by Act II of 1861 dealing mainly with temporary occupation of land.

Thereafter, Act XXII of 1863 provided for acquisition for private individuals and companies and applied to works of public utility viz. bridge, road, railroad, transport, tram-road, canals for irrigation or navigation, works of improvement of a river or harbour, dock, quay, jetty, drainage work or electric, telegraph and also all works subsidiary to any such work. At the same time Act VI of 1857 was in force which provided for acquisition of land for public purposes.
Then Act X of 1870 repealed both Acts VI of 1857 and XXII of 1863 and made a "consolidated" Act providing for acquisition of land for public purposes and for companies and incorporated Part VII (acquisition for companies) for the first time. This Act was finally repealed in 1894 by the present Act.

**Rationales and Objects of the Act 1 of 1894**

The reasons behind its enactment were the need to acquire land needed for public purposes and for companies and the determination of compensation to be made on account of such acquisition. Acquisition includes the purpose as well as the actual taking of possession. The object and intention of the Act are to comprise in one General Act sundry and elaborate provisions relating to the acquisition of land for "public purpose", to assess the amount of compensation. To avoid the necessity of repeating such provisions in subsequent Acts dealing with similar acquisitions and to ensure uniformity of the provisions that the sections of the land acquisition act were introduced in subsequent Acts by employing and incorporating words of legislation in the subsequent Acts. It was further held that acquisition of land for settlement of refugees was for a 'public purpose'. Though the matter is a just one and the ultimate decision rests with the court, but the action of the legislature in deciding upon the acquisition is itself considered good proof that the acquisition is for a 'public purpose'. For example, all provisions of the Land Acquisition Act have been incorporated in the West Bengal Land Development and Planning Act 1948, save to the extent they are expressly varied or accepted by such Act.

**Facts leading to Act 1 of 1894.**

Before the last enactment of 1870 valuation and compensation of acquired land on immovable property were made by the Collector by agreement, if possible. If there was no agreement the dispute had to be referred to arbitrators and there was no appeal against their decisions. The decisions could be impeached only on the ground of corruption and misconduct of arbitrators. As those laws did not lay down any instruction for their guidance in performing their tasks and the arbitrators were sometimes incompetent and complacent, Act X of 1870 was introduced in order to abolish the system. Thereby the arbitrators who were generally Collectors were required, in case of dispute with the landholder to refer the difference to the court of
the District Judge who aided by assessors disposed of the case. Therein appeal lied to
the High Court in case of disagreement between the Judge and the assessor. But Act X
of, 1870 was not found entirely ineffective because infrequent reference to court by
the Collector as per the Act rendered the landowners of small pieces of land to pay
court costs exceeding the value of the land itself.

On the other hand, if the final award of the court was ever so little in excess of
Collector's tender, the whole incidence of cost fell on the Collector and as such the
landholder used to refuse even liberal offers of the Collector and a reference to court
meant trying their luck at the cost of the Collector since the interest payable to the
landholder commenced from the date of handing over possession. The chance of
altogether escaping payment of costs was so great, that claimants were in a position of
risking very little in order to gain very much and had, therefore, every motive to
refuse liberal offers of the Collector and would try their luck by compelling a
reference to the court. Thus some landowners preferred to protract the proceedings to
the utmost. All these resulted in a very heavy and undeserved burden on the public
purpose.

But the Amended Act of 1894 made the Collector's award final, unless altered
by the decree in a regular suit and interested person could refer disputes to an
authority quite independent of the Collector and further right to appeal to appellate
courts. Further, it dispensed with the services of the assessors and left the matter to
the sole arbitration, first of the Collector and then of the Judge and in that way
shortens litigation and diminish expenses. The landowner will no longer be
encouraged to litigate by the idea that they hardly lose, but they may make a great
gain by doing so.

Thus the amended Bill of Land Acquisition 1870 was introduced in Indian Council in
1892 and was referred it to a Select Committee on whose final report, the assent of the
Governor General of Indian Council was received and it came into force on 1st March
1894.

Preamble and Subsequent amendments to the Act

As to the brief outline of the Land Acquisition Act, 1894 sections 1 to 3 give the short
title, object and reasons and the important definitions. Sections 4 to 17 deals with the
process of acquisition. Then comes sections 18 to 28 which describes the reference to court and procedure thereupon in the off chance of a conflict with respect to compensation. Sections 29 and 30 deal with Apportionment in case of more than one individuals interested, and section 3 to 34 lay down the payment of compensation. Sections 35 to 38 deal with temporary acquisition of land and finally sections 38 to 44 deal with the acquisition of land for companies.

According to it an enquiry or proceedings by the Land Acquisition Collector is just an Administrative act, it is neither Judicial nor a Quasi Judicial act. Though section 14 gives the power to summon and enforce attendance of witness and compel production of documents as in Civil Procedure Code to the Civil Court. The offer made by the Land Acquisition Collector binds the government not the persons interested. If there is an agreement between the collector and the persons interested as to the compensation, area of land, apportionment (in case of more than one persons interested) no need arises for further proceedings otherwise provisions of Section 18 as to the judicial settlement are invoked.

Land Acquisition (Amendment) Bill, 2007

As we have known earlier, land acquisition refers to forcibly acquiring land without the consent of the land owner. Currently, land is acquired by the government under the Land Acquisition Act, 1894. This Act permits acquisition if the land is to be used for a ‘public purpose’ project. Public purpose currently includes village sites, town and rural planning, residential projects for the poor or those displaced by natural calamities, planned development (education, housing, health, slum clearance) and projects of a state corporation. Private land may also be acquired for the use of a company for a ‘public purpose’ project or for any work that is ‘likely to prove useful to the public’.

The Amendment Bill modifies the conditions under which land may be acquired. It defines ‘public purpose’ in a much narrower manner. Land acquisition may be done only for strategic naval, military or air force works; infrastructure projects of the government; or any purpose useful to the general public where 70 percent of the required land has been purchased from willing sellers through the free market. Infrastructure is defined as projects relating to electricity, roads, highways, bridges, airports, rail, mining activities, water supply, irrigation, sanitation and sewage, and any other notified public facility. It is important to note that under the proposed law, any company (such as Tata Motors at Kalinga Nagar) would have to purchase at least 70 percent of the land required, and the compulsory acquisition may be used for the remaining requirement. Incidentally, in the Singur case, the plots belonging to farmers who have accepted compensation is 69.4 percent of the area identified.

A second significant change is in the method for assessing the value of the land for compensation. Currently, the District Collector has to determine the current price value of the land. The Amendment Bill requires the Collector to take the highest value of (i) the minimum land value for the area specified in the Indian Stamp Act, 1899; (ii) the average sale price of at least 50 percent of higher priced sales of similar land in the village or its vicinity; and (iii) the average sale price of at least 50 percent of higher priced land purchased for the project.
Another significant change is that the Collector must factor in the intended use of the land and the value of such land while determining compensation. These changes would lead to gains to the land owners due to any change in the land use. So a farmer selling agricultural land which would be used for commercial purposes would get commercial rates. Also, the clause ensures that the compulsory acquisition is done at rates linked to those at which voluntary sale took place, while meeting the contiguity requirement of projects. If the acquisition is for the use of a company, 20-50 percent of the compensation amount must be offered as shares or debentures of the company. The receiver may either accept this offer or ask for a full cash settlement. This clause does not distinguish between shares and debentures. By accepting shares, the land owner may be able to participate in any significant benefit to the company from the project. However, if the land owner accepts debentures, he receives only a fixed return; he is effectively lending money to the company to purchase his own land. The Amendment Bill also has a few provisions related to resale of land. Land acquired may be transferred only for a public purpose and with prior approval from the government. If the land is not used for five years from the date of possession, it shall be returned to the government. Whenever acquired land is transferred to another entity, 80 percent of the difference between the consideration received and the original acquisition costs—the capital gain, in other words—shall be shared among the original land owners and their heirs. These clauses are designed to prevent using the land acquisition route as a means of speculating in land. However, the 80 percent clause could have implementation issues in three different ways.

First, the Bill does not set a specific time limit for the application of this clause after the original acquisition. Therefore, the acquirer must keep track of the original owners and their heirs in perpetuity so that they can be paid in case of a future sale. Second, the new sale price of the land may be difficult to calculate if it is part of a larger deal. For example, if the original purchase was for a project undertaken by a corporate entity and this entire corporate is taken over by new owners, it may not be feasible to calculate the price paid for this particular piece of land. Third, in cases in which the company has invested in developing the land, it is not clear whether the original acquisition price would be adjusted upwards for the cost of development.
The Process of Land Acquisition

For the purposes of Land Acquisition Act, proceedings are carried on by an officer appointed by the government known as Land Acquisition Collector. The proceeding under the Land Acquisition Collector is of an administrative nature and not of a judicial or quasi-judicial character. When a government intends to occupy a land in any locality, it has to issue a notification under Section 4 in the official gazette, newspaper and give a public notice which entitles anyone on behalf of the government to enter the land for the purposes of digging, taking level, set out boundaries etc. The notification puts forward the intention of the government to acquire and entitles government officials to investigate and ascertain whether the land is suitable for the purpose. The section also makes it mandatory for the officer or person authorised by the government to give a notice of seven days signifying his intention to enter any or building or enclosed court in any locality. This is a mandatory provision of the process of land acquisition.

An officer or authorised person of the government has to tender payment for all necessary damage, and all disputes regarding insufficiency of amount have to be referred to the collector. Under Section 5(a) any person interested in land which is notified under section 4 (who is entitled to claim an interest in compensation) can raise an objection, in writing and in person. The collector after making inquiry to such objections has to forward the report to the government whose decision in this respect would be final. After considering such report made by the collector under section 5(a) the government may issue a declaration within one year of the notification under section 4 to acquire land for public purposes or company, this declaration is a mandatory requirement of the acquisition.

After the declaration under Section 6, collector has to take order from the appropriate government whether state or central for the acquisition of land under section 7. The next step in the process of acquisition is that collector has to cause land to be marked out, measured and appropriate plan to be made accurately, unless it is already done. Requirement of this section deals only with approximation and does not require exact measurement. An important process that takes place under this section is demarcation which consists of marking out boundaries of land to be acquired, either by cutting trenches or fixing marks as posts. Object is to facilitate measurement and
preparation of acquisition plan, but also let the private persons know what land is being taken. It is to be done by requiring body that is the government department or company whichever be the case. Obstruction under Section 8 and Section 4 are offence punishable with an imprisonment not exceeding one year and with fine not exceeding fifty rupees.

Section 9 requires the collector to cause a public notice at convenient places expressing government's intention to take possession of the land and requiring all persons interested in the land to appear before him personally and make claims for compensation before him. In affect this section requires collector to issue two notices one to the locality of acquisition and other to occupants or people interested in lands to be acquired, and it is a mandatory requirement.

Next step in the process of acquisition requires a person to deliver names or information regarding any other person possessing interest in the land to be acquired and the profits out of the land for the last 3 years. It also binds the person by requiring him to deliver such information to the collector my making him liable under sections 175 and 176 of the Indian Penal Code. The object of this step is to enable the collector to ascertain the compensation by giving him a vague idea.

The Final set of collector's proceedings involve an enquiry by the collector into the objections made by the interested persons regarding the proceedings under section 8 and 9 and making an award to persons claiming compensation as to the value of land on the date of notification under section 4. The enquiry involves hearing parties who appear with respect to the notices, investigate their claims, consider the objections and take all the information necessary for ascertain the value of the land, and such an enquiry can be adjourned from time to time as the collector thinks fit and award is to be made at the end of the enquiry. The award made must be under the following three heads: a) Correct area of land b) Amount of compensation he thinks should be given c) Apportionment of compensation

Section 11 makes it obligatory on the part of the collector to safeguard the interests of all persons interested, even though they might not have appeared before him. In awarding compensation the Land Acquisition Collector should look into estimate value of land, give due considerations to the other specific factors. Value of
the property in the neighbourhood can be used as a criteria. The award should be made within 2 years.

**The Constitutional Framework**

Originally the Constitution of India consisted of provisions under Article 19(f) and Article 31 which constituted Right to Property. But there were number of difficulties that the state was confronted with, Right to property, Articles 14, Articles 19 and Article 31 read in tandem by the Courts proved to be anti developmental, as the courts struck down various acts of the state. In a number of cases the courts declared the reforms initiated by the state as being ultra vires, which hampered the development by means of growth of infrastructure which was essential for development soon after the independence. It was because of the difficulties in the functioning of the right to property that had been brought to light by the judicial decisions the Constitution First Amendment Act, 1951 was enacted and the Right to Property was done away with. Article 31(A) which was enacted categorically states that no law which provides for acquisition by the state of an estate can be held void as being ultra vires Article 14 or Article 19. It also provided for payment of compensation at a rate not less than market value of the property.

Acquisition and Requisition of property falls in the concurrent list, which means that both the centre and the state government can make laws on the matter. There are a number of local and specific laws which provide for acquisition of land under them but the main law that deals with acquisition is The Land Acquisition Act, 1894. The law was enacted by the British government and by virtue of The Indian independence (Adaptation of Central Acts and Ordinances) Order, 1948 continues to exist as the law of land acquisition in India. Given the fact that Land Acquisition falls under the concurrent list both the State Government and the Central Government have amended the law, evolving it with time and according to the local needs.

Land can be acquired either by the state or the central government for the purposes listed under state and central list respectively unless the central government delegates the task to the state government under article 258(1) of the Constitution. The term “appropriate government” in the act would imply the government weather centre or state that issues a notification under section 4 to acquire the land.
Constitutionality of various sections of the Land Acquisition Act has been considered as being in violation of Article 19 and 31 of the constitution as being confiscatory in nature and it is sought to deprive appellants of their lands.

Article 31(2) categorically states that a land can be acquired by the state only for Public Purpose. Broadly speaking, public purpose includes a purpose, in which the general interest of the community, as opposed to a particular interest of the individual, vitally concerned. In a generic sense the expression “public purpose” would include a purpose in which even a fraction of the community would be involved. It has been identified as a work from which public in general would derive benefit or be benefited. Anything which is useful to the public, in the sense that it confers some public benefit, or conduces to some public advantage, is a public purpose. It is the requirement of public purpose that is determining factor on the question whether or not a particular land should be acquired, and the considerations of hardships to the individuals cannot outweigh the question of public demand. Section 3(f) of The Land Acquisition Act defines public purpose as the expression “public purpose” includes-

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or
under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies.

The expression Public Purpose is not to be strictly construed under Section 3(f) of Land Acquisition Act, it is an inclusive definition of public purpose and from time to time the courts have held different purposes to be Public Purpose. It is not possible to give an exact and all-embracing definition of public purpose. Public Purpose includes the following aims:

I. In which general interest of the community, or a section of the community, as opposed to the particular interests of the individuals, is directly or vitally concerned;

II. Which would preserve or promote public health, comfort or safety of the public, or a section of it, whether or not the individual members of public may make use of the property acquired.

III. Which would promote public interest, or tend to develop the natural resources of the state.

IV. Which would enable department of the government to carry on its governmental functions.

V. Which would serve the public, or a section of it, with some necessarily or convenience of life, which may be required by the public as such, provided that the public may enjoy such service as of right; or

VI. Which would enable individuals to carry on a business, in a manner in which it could not be otherwise be done, if their success will indirectly enhance public welfare, even if the acquisition is made by a private individual, and the public has no right to any service from him, or to enjoy the property acquired; or

VII. If the use to which the property would be put, is one of the widespread general public benefit not involving any right on the part of the general public itself, to use the property or;
VIII. Which would result in an advantage to the public; it is not necessary that the property, or the work upon it, should be available to the public as such; the acquisition may be in favour of individuals, but, in furtherance of scheme of public utility, which would result in enhancement of public welfare.

One of the tests of public purpose is if the purpose would satisfy the expenditure of public funds and in a number of judgements courts have said that government is the best judge to decide public purpose. The declaration of public purpose by the government is final except if there is a colourable exercise of power. To allege exercise of power of eminent domain the facts or grounds should be pleaded in support, which would show at least some nexus between the party for whose benefit the power is sought to be exercised and the authorities of the state which could support a reasonable suspicion that there has been an improper exercise, of such power exceeding the ambit of eminent domain as to constitute a fraud. The power to select the lands is left to reasonable discretion of the government and the courts cannot interfere in this regard. The view held by court is that a declaration under Section 6 is a conclusive evidence of public purpose and unless it is shown that there has been a colourable exercise of power courts cannot go on to look weather it is a public purpose or not.

With the march of civilization, the notions as to the scope of the general interest of community changes and widens, with the result that old and narrower notions as to sanctity of private interest or individual no longer stem the forward flowing tide of time and give way to broader notions of general interest of the community.

**Constitutional Validity of Land Acquisition Act, 1984.**

The constitution, as it stood before the 44th Amendment in 1978, provided for the right to own property as a fundamental right. These provision were explicit in articles 31 & 19(1) (f). The constitution also provided that in case of any breach or an attempt thereof of any fundamental right, the aggrieved person can approach the Supreme Court for its redress. This was viewed as a hurdle by the Government that could impede its ambitious plan of acquiring land for public purpose or for a company. Thus, ever since 1951, the Govt. started, through the 1st & 4th amendment, to incorporate various land reform acts. This it did by incorporating schedule 9 of the
Constitution. Time and again, the government felt that the right to property was a roadblock for it. It therefore sought to amend the constitution and aimed at abolishing the right to property. It did so in the year 1978 by the 44th amendment to the Constitution of India. The road to this amendment was not very easy through. The Supreme Court had constantly held that the legislature did not have the power to amend the constitution thereby altering its basic structure. This could be seen in the case of Shankari Prasad V/S Union of India- Where the Court held that the legislature had ultimate power to amend the constitution even the fundamental rights. The decision was upheld in the case of Sajjan Singh v/s State of Rajasthan. Then, in Golak Nath v/s State of Punjab, the Supreme Court held that the Parliament did not have any power to amend the constitution and that article 368 of the Constitution only provided the procedure for amendment. This was then finally overruled in the Keshavanandi Bharati case where it was held that the Parliament has power to amend the Constitution but not doing so to the basic structure of the constitution.

Thus as mentioned above, the 44th Constitution Amendment Act, abolished the right to own property as a fundamental right but it declared that it would remain to be ‘legal right’. Thus it could have been now possible for the Government to acquire land without apprehending any litigation challenging its act of acquisition in the Supreme Court under Article 32 of the Constitution of India. The constitution al validity of the Act can be demarcated in to the following two periods.

**Before the 44th Amendment.**

It would come as a shock but it was legitimate, even before the 44th amendment, for the govt. to have acquired land for its public purpose or for a company. This it could have done under the principle of ‘Eminent Domain”. This term was coined by Hugo Groitus in 1625 and means the Supreme control over the property of the subjects enjoyed by the sovereign.“the property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make to those who lose their property.” Thus in other words, it can be said that the
Govt. -the sovereign- enjoyed the complete authority over the land of its subjects and could acquire the same for public purpose or for a company. It would have been completely legitimate for the government to do so even against the wishes of the owners of the land.

**After the 44th amendment.**

As mentioned above, the 44th amendment did away with the right to property as a fundamental right and converted it only as a ‘legal right’. Thus, now the Govt. could acquire the lands of any person in India without apprehending any legal action under the provisions of the constitution. This was so because the right to property was merely a legal right and ceased to be a fundamental right and hence, its breach could not be redressed by the Supreme Court under article 32.

Thus, it can be said that it would have been completely legitimate for the Govt. to have acquired land either before or after the 44th amendment. The only hurdle that it would have faced is of litigation in the Supreme Court. The Court too would have justified Government’s act of acquiring the land under its principle of eminent domain, thus leaving the owners of the land without any remedy. To conclude, I would like to state that the Act confers too much power to the Government and with great power comes great responsibility. Apart from using the power judiciously, the duty vests in the courts to assess whether the govt. is using its power arbitrarily or trying to achieve oblique motives or to do something indirectly which it was precluded from doing directly.

At the end of all this, what can be said is whether constitutional or not, the Act is quite draconian. So because of the fact that while acquiring land, the Govt. overlooks into the sentiments, emotions of its owners attached to the land and acquires it forcibly. Also, the compensation paid to the persons interested is nowhere near the price that the owners could have actually received for their piece of land. Also, there are thousands of millions of people whose sole income comes from the money earned through these lands. Compulsory acquisition of land would be snatching the livelihood of these people. Though, for development of the nation, a fair balance needs to be achieved between the legitimacy of the ‘public purpose’ and the needs of the people who are interested in the land to be acquired. All action of the
government to acquire the land should be governed by such balance and due circumspection.

**Implications of Land Acquisition Act**

Acquisition of agricultural land and displacement of farmers and others dependent upon land have become an issue of immediate concern. The Government's note in a recent letter sent by the Union Commerce Minister to State Chief Ministers advising them to restrict acquisition of multi-crop agricultural land to 10% of the total area acquired for a SEZ\(^2\). The rest has been left to the States, since land as well as compensation and rehabilitation policy falls within the domain of the State Governments\(^3\). This response is clearly inadequate. The State Governments should be encouraged to prepare detailed land-use maps and acquire land for industrial projects avoiding fertile farmland and displacement as far as possible. This calls for a planned approach to industrial development as opposed to a market-led approach currently being promoted by the Central Government. Wherever acquisition of agricultural land is unavoidable, the responsibility of securing adequate compensation and proper rehabilitation for people displaced by land acquisition and ensuring their livelihood security has to be shared by the Central Government. Serious questions have already been raised from various quarters vis-à-vis the Land Acquisition Act. This legislation, which was enacted during the colonial period, is a misfit in the current Indian setting and needs to be amended in order to make it congruent with an independent and democratic State. Besides, a National Rehabilitation Policy needs to be adopted by the Central Government, preferably in the form of legislation.

Land acquisition in the present world is mostly associated with 'development-induced displacement'. This is not a new phenomenon. It implies the forcing of communities and individuals out of their homes, often also their agriculture lands, for the purposes of so called economic development. It is a form of forced migration. Historically, development-induced displacement was associated with the construction of dams for hydroelectric power and irrigation purposes but such displacement also took place due to many other activities, such as mining. In recent years, one social


\(^3\)ibid
issue that has caused intense debate among the academics is the involuntary
displacement of people from their productive assets particularly cultivable land due to
industrial or infrastructural projects. Such displacement is usually executed by a legal
action in the form of 'acquisition of land' by the state 'in the public interest'.

Though the process of acquisition of land is not new, the intensity of its
adverse effect was not comprehended in the past as it is being comprehended today in
the Third World countries. Following economic liberalization, growing needs of
infrastructure and modern industries have threatened traditional sources of sustenance
of people. More and more agricultural lands are being depleted for setting up
industrial or infrastructural projects. According to the World Bank Environment
Department (WBED) roughly about 10 million people are displaced each year all over
the globe due to dam construction, urban development, industrial expansion or
infrastructural construction. While development-induced displacement occurs through
out the third world, two countries in particular China and India are responsible for a
large portion of such displacement.

We shall consider the Indian case in detail with reference to Orissa. In recent
years, large tracts of agricultural land in India have been acquired to non-agricultural
use, chiefly for commercial, industrial and real estate purposes. This is reflected in
the data on land use pattern in India. Even with a serious decline in uncultivated land
and almost unchanging amount of areas under the category ‘non-cultivated land’, the
net sown area in this country stagnated at around at 140 million hectare since 1980.
That the net sown area stagnated at around 140 million hectare in spite of a serious
decline in uncultivated land is largely due to a compensating increase in the land area
under non-agricultural use which is about 25 million hectare today (it was 10 million
hectare in 1951). Increase in land under non-agricultural use takes place largely due to
urbanization and the associated commercial, industrial and real estate activities. In
India such activities received an impetus in early 1950s, thanks to state-led
programme of industrialization. However, it reached a plateau by 1980 when about 20

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4 The official data on displacement in China has been contested by various researchers and the activists.
On the negative aspects of special economic zones in China, see Shankar Gopala Krishnan: Negative
5 Amit Bahaduri, Development or Developmental Terrorism?. EPW February 17, 2007. Pp 552
6 Walter Fernandes (1991) Power and Powerlessness: Development Projects and Displaced Tribals,
Social Action vol. 41, pp 423
million hectare of land was under non-agricultural use. The departure from the plateau took place in the era of globalization when a new impetus came from a new engine of growth, namely, the corporate capital. As the relevant data indicates, between 1991 and 2003, i.e, in a span of 15 years, about 5 million hectares of land has been converted to non-agricultural use. The amount is half of what has achieved during first 40 years of independence. There are indications that between 2005-2007, the conversion of agricultural land to non agricultural use is taking place at a still higher pace. In and around the big cities, new urban projects are coming up. These put pressure on agricultural land in the nearby rural areas. For example, just outside Mumbai, farmers have been served acquisition notices in 2006 for 10120 hectare of SEZ (the area is one third of the metro city of Mumbai) which could be developed by Reliance Industries\(^7\). In Hyderabad, during last five years, 90000 hectares of land has gone out of cultivation in all the 25 mondals in and around Hyderabad\(^8\). In many cases, these are yet to be recorded in the official statistics of the government.

There are indications that the incidence of transfer of agricultural land for non-agricultural use would increase as the Special Economic Zones are developed in major states of India. Even after the suggested reforms in SEZ Act (2005), there are 212 SEZ proposals which have received approval from the Board of Approval of the Ministry of Commerce, Government of India. Even with reduced size, these SEZs are expected to require 33761 hectares of land, a large part of which will come from the conversion of agricultural land. Coupled with this, there are major infrastructural projects like construction of new airports, power generation Plants, eight lane roads, etc. which would require large tracts of land most of which would come from conversion of agricultural land. The pressure on agricultural land is bound to accelerate so much so that the net sown area of the country might decline in near future.

One important feature of this changing land use pattern is that lands are now being acquired by corporate capital which would invest in these lands for promoting industrial, commercial and real estate activities. Entry of corporate capital in the land market is a relatively new phenomenon. But then, this must not be taken as an

\(^7\) Frontline, Oct 2006. pp21
\(^8\) Land Alienation and Local Communities, V.R. Reddy and B. Suresh Reddy; EPW, August 4-10, 2007.
accidental or temporary phenomenon. The land markets in and around the big cities are bound to be dominated by the corporate capital because these lands are being utilized for big, capital intensive ventures. The project costs of these ventures are very high and only corporate capital is in the position to mobilize the necessary funds for these projects. Consider, for example, the provisions under the SEZ Act (2005). SEZ is visualized as an integrated township with fully developed infrastructure. The township would be promoted by private developers who would take the responsibility for the entire investment for the project. The sum involved is quite high. The petty developers would never dare to take up such projects. Either the State or the corporates can dare to take up such ventures. In China, SEZs were developed by the State. In India, the policy is to offer such projects to the private sector. Since small operators in the private sector can never take up such ventures, the development or promotion of SEZs in India would be taken up by domestic or foreign corporate capital only. The scenario is more or less the same for the projects outside SEZ as well. It is not therefore accidental that various corporate houses, both domestic and foreign, are entering the land market in India in a very big way. In the era of globalization the large scale acquisition of agricultural land for non-agricultural use is being done chiefly in the interest of the corporate capital. India is no exception.

**Land Acquisition: Past and Present**

In India, the system of keeping records of cultivable land by the state for the purpose of revenue collection originated in pre-colonial period, while systematic legal and administrative machinery for acquiring land from private owners developed during the colonial regime. The all-embracing nature of the colonial state power found one of its successful expressions through the enactment of the Land Acquisition Act in 1894. Much before the enactment of Land Acquisition Act of 1894, the Indian forest act of 1965, 1978 had facilitated the acquisition of 84,700 sq. mile of forest area by the year 1980 for building railway line in the name of public purpose. The succession of some landmark events, which led to the enactment of this enabling piece of legislation, showed a consolidation of British colonial power in the Indian

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subcontinent\textsuperscript{11}. This consolidation of the colonial power was not only a political phenomenon, but it also ushered in a chain of technological as well as economic events which needed a well organised legal and bureaucratic structure. In 1820, coal mining in Raniganj and extensive irrigation network started in North India. The construction of the first Indian steamship, coffee and tea plantations in Mysore and Assam started by the late 1830s. Between 1850 to 1880, the first telegraph lines, railways, modern cotton and jute mills were established\textsuperscript{12}. This period also witnessed the first legislation, which curtailed the access of the local people to forests and mechanized mining as well as growth of manufacturing sector of the economy. In 1893 the first Indian Petroleum Refinery was established and in the next year, that is, in 1894, the Land Acquisition Act was enacted for acquiring privately owned land by the state for public purposes. The succession of events, which led to the enactment of this Act, clearly showed that it was the need of the time. Mining, plantation, establishment of railway lines, manufacturing industries, beginning of major irrigation works, and road building, all needed land which again was already under various forms of state controls and customary tenurial systems that existed from the pre-colonial period. Thus, enabling Act empowered the state to acquire any privately owned as well as common property land for public purposes. The Act provided the legitimacy behind the acquisition which otherwise would have to be done with the application of brute force.

After Independence, the Government of India did not abolish this piece of colonial legislation; and acquisition of private land continued with the help of the Land Acquisition Act, 1894\textsuperscript{13}. The first major change in the Act was introduced in 1984 through an amendment by the Central Government. The said amendment resulted in some beneficial changes for the project-affected people (PAP), which are enumerated below:

1) Payment of 12 percent per annum interest on land value to the person whose land has been acquired commencing from the date of notification to the date of declaration of the compensation award.

\textsuperscript{11} Parasramman (1999) The Development Dilemma: Displacement in India. Pp42
\textsuperscript{12} ibid
\textsuperscript{13} K. B. Saxena Development, displacement, and resistance: The law and the policy on land acquisition. Social Change, September 2008: pp 392
2) Payment of solatium (i.e. compensation for losses suffered or injured feelings) at the rate of 30 percent. Earlier it was 15 percent.

3) A provision was made to those not satisfied with the Collector’s award to apply for a redetermination of the compensation.

4) The amendment also tried to minimize the undue delay that characterizes land acquisition proceedings. But along with the above beneficial changes the amendment had also conferred greater discretionary power on the Government and introduced the acquisition of land for private companies. Before the amendment, private companies procured land from the market by paying the market price. The amendment enabled the private companies to get land from Government, which meant that the latter had to acquire land beforehand on behalf of the company.

In India, every state Government has the right to amend the provisions of the Land Acquisition Act, 1894 in its application to that particular state and since Independence the different states have made several amendments. As a result, at present there exists a good deal of inter-state variation with regard to the various technical aspects of the land acquisition proceedings. Most of these inter-state variations centre on matters related with notification, survey, objections to notification, payment of compensation and the authority that is empowered to set in motion the acquisition proceedings. The LA Act however is basically a Central concern, since State Governments can make any amendments as long as the changes are not opposed to the Central Act and the Central Government has the power to modify an amendment or declare it invalid.

Development initiative by the Indian State since liberalisation in 1991 in the form of inviting foreign and Indian private investments is proceeding at a much faster rate than ever before. These private capital investments require the acquisition of huge amount of land, which are mostly agricultural for the installation of industries, building of roads and mining. The acquisition of land for various development projects for the sake of economic growth also entail loss of livelihood of the people.

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14 ibid. Pp 394
who depend upon this vital natural resource. Depriving people from their immediate means of livelihood (land) for the sake of long term economic growth (e.g. better employment opportunity) without provisioning adequate rehabilitation and resettlement causes widespread social and political movements by the people against the State\textsuperscript{17}. A number of violent peasant movements in different states of India (e.g. Orissa, West Bengal, Andhra Pradesh, Haryana, Gujarat, Rajasthan, Uttar Pradesh and in others) against the acquisition of farmland by the Government for private industries clearly reveal peoples' discontent towards the paradigm of development chosen by the policy makers of the Indian State\textsuperscript{18}. The recent move of the Indian Government to create Special Economic Zones (SEZs) within which the export-oriented industrialists and big business groups would be given land at a low price and all kinds of tax reliefs has become another front of battle over land between the State and the civil society in India\textsuperscript{19}. While the Government was quick enough to pass the SEZ Act 2005 in the Parliament, it is equally lackadaisical to enact a law for ensuring resettlement and rehabilitation for the people who would be severely affected by development project. The democratic and independent Government in India still acquires land for private industrialists by employing a colonial Land Acquisition Act of 1894, which does not contain any mandate for rehabilitation; it only enables the land titleholders to receive monetary compensation at the market rate\textsuperscript{20}. This colonial law and modern liberalisation policy which is now being hurriedly pushed forward by the present 'democratic' Government is not only a mocking combination but is it also one of the greatest contradictions of globalisation and the New Economic Order in India\textsuperscript{21}. Besides the loss of livelihood and pauperisation of a large number of people in the stark absence of legal and social security measures, the democratic and egalitarian measures institutionalised and adopted by the Indian Government and policy makers through long struggles of nation building in the post-colonial period are also receiving severe blows by this recent offensive move towards liberalisation. Land reforms (empowering the poor by giving land to them) and Panchayati Raj (the system of local governance) are the two pro-poor institutions, which are now being severely affected.

\textsuperscript{17} Amit Bahaduri. Industrialisation Without Employment, Himal Southasian, January 2008. Pp53
\textsuperscript{18} Walter fernandes. Singur and displacement Scenario, EPW, January 20, 2007. Pp203
\textsuperscript{19} Prasenjit Bose, The Special Economic Zones Act, 2005: Urgent Need for AMENDMENT. The Marxist, Vol. XXII, No. 4 October to December 2006. Pp. 4
by globalisation in India. All these development demands reform and change in the spheres of policy, legislation and governance.

Two Bills currently pending in Parliament address several aspects of these issues. The Land Acquisition(Amendment) Bill, 2007 proposes changes in the conditions under which land may be acquired, the process of acquisition, as well as modifications in computing the compensation for the land. The Rehabilitation and Resettlement Bill, 2007 provides for benefits and compensation for all persons displaced due to land acquisition.

Land Acquisition (Amendment) Bill, 2007 refers to forcibly acquiring land without consent of the land owner. Currently, land is acquired by the government under the Land Acquisition Act, 1894. This Act permits acquisition if the land is to be used for a ‘public purpose’ project. Public purpose currently includes village sites, town and rural planning, residential projects for the poor or those displaced by natural calamities, planned development (education, housing, health, slum clearance) and projects of a state corporation. Private land may also be acquired for the use of a company for a ‘public purpose’ project or for any work that is ‘likely to prove useful to the public’\(^2^2\). The Amendment Bill modifies the conditions under which land may be acquired. It defines ‘public purpose’ in a much narrower manner. Land acquisition may be done only for strategic naval, military or air force works; infrastructure projects of the government; or any purpose useful to the general public where 70 percent of the required land has been purchased from willing sellers through the free market\(^2^3\). Infrastructure is defined as projects relating to electricity, roads, highways, bridges, airports, rail, mining activities, water supply, irrigation, sanitation and sewage, and any other notified public facility. It is important to note that under the proposed law, any company (such as Tata Motors at Singur) would have to purchase at least 70 percent of the land required, and the compulsory acquisition may be used for the remaining requirement. Incidentally, in the Singur case, the plots belonging to farmers who have accepted compensation is 69.4 percent of the area identified. A second significant change is in the method for assessing the value of the land for compensation.


\(^{23}\) ibid
Critical Analysis of land acquisition policy

As is obvious from its title, LAA is more than a 115 years old. Though several amendments have been brought about in this act from time to time the acquisition procedure remains as it used to be when this law first came into existence. The dimensions of this law (other acquisition laws share broadly the same framework) which have adverse implications for those affected by its use relate to its (a) conceptual frame, (b) norms of applicability, (c) range of entitlements, (d) mode of participation, and (e) design.

The conceptual frame is provided by an overarching rationality for decisive state control over private land. The legal basis for it is embedded in the doctrine of Eminent Domain while 'Public Purpose' lends moral defence to it. The norms of applicability are contained in definitions of terms used such as those of 'land' and 'person interested'. The range of entitlements is covered by the scheme of compensation and mechanism of its computation and disbursement. The mode of participation is reflected in the processes by which state communicates information to those likely to be affected and seeks their views on specified matters. The design of the Act brings out the skewed power relations between the state and the affected citizens in the acquisition of land. These are reflected in the expanding ambit of state power, circumscribed entitlements of the affected persons, omission of responsibility for the consequences of acquisition, incompatibility with the social reality and deficiencies which induce arbitrary exercise of discretion and encourage derelict action.

Rationality of State Control over Natural Resources

The Land Acquisition Act (this is true of other land acquisition laws as well) confines itself to the acquisition and its processes. Its entire focus is on regulating state action to take over private land so as to have complete control over its resource potential. What happens to people from whom land is acquired or those who were dependent on land for various life-supporting activities is not its concern. The scope of law is exhausted once land is taken possession of. The limited concern reflected in its framework for people whose land is acquired is with regard to payment of compensation to them. The law, therefore, tends to redefine the state's relationship
with citizens in terms that extinguish their rights, limit their choices and force them to accept consequences that are highly detrimental to their dignified existence. This is achieved by tilting the balance of relationship overwhelmingly in favour of the state. This framework is not only antithetical to democracy but also the negation of humanism.

The law also distorts the relationship of people with land evolved in the context of socio-economic forces operating in different situations. This relationship took expression in the shape of various uses of land around which rights and interests were crystallised. By vesting in the state the exclusive power to decide what resources are required by it and determine the cost required to be paid to take control of them, the entire set of delicately balanced individual and collective rights, interests and obligations are bypassed. These entitlements get reduced to a single, simplistic and limited relationship expressed in individual ownership of land authenticated by documentary validation. The law, therefore, stubbornly ignores complexity of agrarian relations. The use of acquisition law results in mass scale displacement and causes a 'spiral of impoverishments' to the affected people besides social, cultural and emotional consequences detrimental to them. It is instrumental in facilitating this unjust state action without even recognising the consequences that would flow from it. The framework of law, therefore, is in conflict with the overall framework of social justice enshrined in the Constitution and expressed through various other instruments, national and international, of human rights.

By tending to concentrate powers in the state to the utter disregard of people's interests, the framework has influenced courts' understanding of the problem of displacement and contours of judicial review on the subject. The courts have steadfastly supported and even reinforced state action. The only responsibility of the state which courts have agreed to examine is with regard to the fairness of compensation paid to the land losers for loss of land. The whole set of problems caused by displacement have been reduced to the single proposition of a compensable

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claim. The resort to this reductionism is also reflected in the determination of rights and interests in land, mechanism of assessing the value of land and mode of payment of compensation. The objective is to simplify diverse range of agrarian and social issues into propositions that could be conveniently translated into operational terms. In this exercise, many complex issues associated with displacement get excluded from the purview of law for which the state accepts no responsibility. The framework, therefore, is guided by expediency so as not to complicate the process of acquisition itself and permit its easy enforcement and expeditious completion. As a consequence, laws of land acquisition become instrumental in dissolving rights of citizens and absolving the state of its obligations to compensate for their loss.

According to the Land Acquisition Act, the state can exercise its right of eminent domain wherein it is the ultimate owner of all land, which it can acquire for public purposes after paying full compensation calculated on the basis of market value. Despite several amendments of the Act after Independence, the two basic principles of land acquisition, viz. (i) public purpose and (ii) compensation on market value, remain unchanged. The various criticisms of Land Acquisition Act in India have also centred on these two cardinal principles. One of the major criticisms of the Land Acquisition Act is that the expression “public purpose” is nowhere defined in the Act and in India the courts do not have the power to decide whether the purpose behind a particular acquisition was a public purpose. The court alone can direct the Collector to hear the objections of a person whose land has been acquired, but the Collector may not always listen to the objections raised by the legal owner of the land.

The second criticism of the Land Acquisition is anthropological in nature. It says that the calculation of compensation on the basis of market value not only deprives the landowner, but it also hides the various socio-cultural dimensions of land ownership in an agrarian society. Land does not only have a market price at the time of acquisition, but it also serves various social, political and psychological functions to its owner. The ownership of a small piece of

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land can empower a landless family and increase the status and prestige of that family in the local milieu. A piece of land supports a family for a number of generations, not simply its present members at the time of acquisition. But these important dimensions of land and its ownership in an agricultural society are not considered for calculation of its value while giving compensation to a land-loser.

The principle of eminent domain refers to 'the power of the sovereign to take property for public use without the owner's consent'. The colonial rulers established their 'eminent domain' over all land within their territory and jurisdiction. For example, land which did not have identified private ownership i.e. those lands over which people had no recorded and/or recognised rights under the colonial law, were appropriated by the colonial state as state property. This included village commons and grazing land, much of it classified as "wasteland" because it did not generate land revenue for the British government. The only kind of right to property which was legitimized by law was private individual ownership of property, inherited and controlled by the male lineage of the family. There was no recognition of customary laws, traditional rights or collective rights and control over land and other resources, which existed in different parts of the country (except for some tribal regions, where the British were forced to recognise these rights due to the peasant revolts).

Public Purpose, the Eminent Domain of the State and the Land Acquisition Act

The important issue of the debate around the Land Acquisition in India is the questions of whether the state should retain power to compulsory acquire private land without the consent of owner or owner of such land. The principle of eminent domain refers to 'the power of the sovereign to take property for public use without the owner's consent', according to which state enjoy ultimate power over all land within its territory, the state has the right to invoke this right for the 'public good' and the consequent compulsory acquisition of land cannot be legally challenged. In the description provided by Black's Law Dictionary the doctrine of 'Eminent Domain' is embedded in the notion of sovereignty which is one of the defining attributes of a state: it is "the highest and most exact idea of a property remaining in government or

in an aggregate body of people in their sovereign capacity\textsuperscript{30}. It lends juristic rationality to the state's control over natural resources within its territory. The rights and interests of individuals or groups exist only with its authority. This implies that the "right of the state or sovereign to its or his own property is absolute while that of the subject or citizen to this property is subject always to the right to take it for public purposes"\textsuperscript{31}. In Wharton's Law of Lexion, it is 'the right which a government retains over the estate of individuals to resume them for public use\textsuperscript{32}'. This implies that the citizen holds his property subject always to the right of the state to take it for 'public purposes'. This power extends to the permanent, temporary or partial acquisition of private property. As a consequence, the right of a person or a community to resist state action for compulsory acquisition of land is obliterated. The limited space conceded to the citizens is the right to be heard and right to claim compensation for the loss of land. The doctrine was part of the common law in England. The colonial rulers established their 'eminent domain' over all land within their territory and jurisdiction. For example, land which did not have identified private ownership i.e. those lands over which people had no recorded and/or recognised rights under the colonial law, were appropriated by the colonial state as state property. This included village commons and grazing land, much of it classified as "wasteland" because it did not generate land revenue for the British government. The only kind of right to property which was legitimized by law was private individual ownership of property, inherited and controlled by the male lineage of the family. There was no recognition of customary laws, traditional rights or collective rights and control over land and other resources, which existed in different parts of the country (except for some tribal regions, where the British were forced to recognise these rights due to the peasant revolts).

Of course, the power of eminent domain was exercised over common property as well as private property. In the case of the former, the state simply had to notify it as state property and no claims or rights of those dependent on it would be recognised. In the case of the latter, under the Indian Expropriation Act, renamed the Land Acquisition Act (LAA) in 1870, the 'owners' i.e. those male persons who held legal titles to the land, were entitled to monetary compensation. The principle of eminent

\textsuperscript{30} cited in Ramanathan, 1995
\textsuperscript{31} Kannan Kasturi. Of public purpose and private profit. Seminar, February 2008. Pp 33
\textsuperscript{32} cited in CPNCR, 2001
domain ensured that the consent of the owner, let alone many others in the village economy who were dependent on the land and whose livelihoods were associated with it – agricultural labourers, sharecroppers, tenants, artisans – was not required in the process of acquisition. The involuntary and coercive nature of the LAA is demonstrated by Section 24 which states, “matters to be neglected in determining compensation: any disinclination of the person interested to part with the land acquired. However, land could be acquired under the Land Acquisition Act only for “public purpose”. The concept of public purpose was introduced to balance the draconian principle of eminent domain. But the definition of what constituted public purpose was deliberately kept vague. The colonial government acquired land for what it considered to be public purpose like, railways, roads, irrigation canals and other public works, which in turn facilitated colonial rule and the extraction of revenues. This principle was used by the colonial government to convert vast stretches of forest land into state property and to de-recognise rights or claims of individuals or communities over them which had no backing of an authenticated document issued by a competent authority. The principle is used to curtail rights and interests over forests and other common property resources customarily enjoyed by communities. The same logic is used to ignore occupation of forest or community land by individuals who have made it cultivable through their labour. No right accrues to such individuals in the absence of validation by a competent authority or entry in the land records prepared by the government which signifies this recognition. Such occupants get excluded from claiming compensation if their land is acquired.

After Independence, the Indian state retained most of the earlier laws and institutions in a more or less unchanged form. The Land Acquisition Act of 1894 was retained along with its draconian provisions, as was the state’s power of eminent domain. It is interesting to note that during colonial rule the power of the sovereign referred to in the principle of eminent domain was vested with the British crown, but when India adopted her own Constitution, sovereignty was vested with the people. However, there was no corresponding shift of powers in the case of eminent domain. Sovereignty continued to be with the state, which continued to acquire land “without the owner’s consent”. The state inherited the right to displace from their colonial

33 Roy Burman, B.K. (1992). 'Indigenous People and Their Quest for Justice', in Chaudhuri, Buddhadeb (ed), Inter-India, New Delhi
predecessors, but did not deem it fit to accord any right of rehabilitation to those displaced. Till date about 60 million people have been displaced or affected by development projects, which is four times the number of refugees exchanged between India and Pakistan during Partition.

The doctrine of Eminent Domain used by the government to representing state powers takeover of privately owned property is rationalised on the basis of utilitarian consideration which lends ethical defence to it. This moral basis is provided by the stated objective that it would serve the interests of a large number of people defined by the phrase 'public purpose'. The difficulty is that the 'public purpose' has not been defined in the Land Acquisition Act, 1894, but only illustrated by categories of activities which would constitute it. This has permitted the government to use it for any purpose considered expedient. The colonial government used this formulation only for the requirement of the government and its agencies. This continued after independence as well. But, in 1984, the application of 'public purpose' was extended to the needs of private companies operating for profit. Besides, the colonial government limited its application to provision of public utilities, creating infrastructure, requirements of defence and governance. After independence, the scope of activities has widened extensively to include manufacturing, trade and commerce. This flexibility has permitted the government to enlarge the scope of acquisition without facing any judicial scrutiny. The law, as interpreted by the apex court, does not require the government to establish the public good involved in specific purposes of land acquisition. Rather, it has reinforced the power of the government in this regard and justified it when it was applied to acquire land for companies earning profit.

Even the inconsistency between the actual and the stated purpose has not been considered as an infringement of 'public purpose'. This has enormously increased the discretionary powers of the government to take over life-supporting assets of individuals. The problem of the affected people is compounded by the fact that the right to property is not a Fundamental Right any more but only an ordinary right in

the Constitution. Its abridgement by the government through a procedure established by law cannot, therefore, be challenged on the ground of infringement of the basic structure of the Constitution. Though acquisition of land deprives people of their established modes of livelihoods and various life-supporting benefits, the Fundamental Right to life guaranteed under Article 21 has not been creatively interpreted by courts to limit the power of the government in this regard or even to cast an obligation on it to provide viable alternative livelihoods to the affected persons. The other difficulty is that the Land Acquisition Act does not provide a framework for acquisition of land for private purpose which could be distinguished from the acquisition for public purpose. This tends to increase the demand for land enormously which is catered to by using the existing undefined but inclusively illustrated formulation of public purpose.

Not surprisingly, therefore, the discourse on land acquisition has severely attacked the existing provision. The alternatives advocated focus on two main objectives. (a) 'Public purpose' must be precisely defined so that it is possible to comprehend its limits and scrutinise the propriety of its use; (b) The affected persons should have a right to challenge its application in specific cases of acquisition in order that courts can adjudicate the propriety. The decision of the government with regard to (a), the following are some of the alternative formulations,

'Public purpose' should be restricted to activities related to national security and provision of public utilities. 'Public purpose' should cover only activities which come within the purview of the Directive Principles of State Policy. 'Public purpose' should be limited to public welfare activities funded and implemented by the government. 'Public purpose' should not be defined in terms of the ownership of the agency requiring land since public sector undertakings also engage in commercial activities and private companies are now entrusted with the delivery of public services. 'Public purpose' should be defined by taking into account the specificity of the purpose for which land is required. Whether 'public purpose' is served by a specific proposal should be decided by the legislature, at least, in respect of large projects. The application of 'public purpose' should exclude land in tribal areas. It should harmonise with the protective laws for preventing alienation of tribal land and rulings of the apex court regarding them.
With regard to (b) there is a fair degree of consensus that the right of the citizen to challenge the acquisition of land for 'public purpose' should be embedded in the law. Those working with SCs/STs advocate that these groups may be provided free legal aid to use this right where acquisition of land is perceived to hurt their interests.

In the recent past, the discussion has also extended to exploring alternatives to land acquisition. One of the suggested alternatives to outright transfer of land is to provide land on lease with provision of monthly lease rent which is subject to periodical revision. This has been particularly advocated in the case of acquisition of tribal land. The alternatives suggested in the acquisition of land for urban development include conversion of ribbon development into corridor development, providing public services through implicit acquisition, as in plot shrinking under town planning schemes and in the use of "Transfer of Development Rights"36.

There is a great deal of agreement on the need for keeping land requirement of companies out of the purview of 'public purpose'. A separate framework for acquisition of land by private agencies may be provided for this purpose with specific obligations cast on the requiring agency to rehabilitate the displaced persons in the same manner as the government should be required to do in the case of compulsory acquisition of land. The government should, however, create arrangements to protect poorer persons due to the unequal bargaining position of parties and provide for fixation of a minimum threshold of land price in case of each transaction to be done by the collector of the district. From the perspective of private sector land requiring agencies, it has been argued that the government should develop a well functioning land market for this purpose, remove restrictions on purchase and sale of land, relax constraints on land use, reduce transaction costs and provide the framework of register which records the intent of requiring agency to buy land privately. In short, the land market should be allowed to operate freely37.

37 ibid
Table 2.1: Definition of Public Purpose in Other Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Act &amp; Year</th>
<th>Definition / Some Circumstances</th>
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<tbody>
<tr>
<td>China</td>
<td>Land Administration Law, Article 21 (1988)</td>
<td>Economic, cultural, national defence construction projects, public works projects</td>
</tr>
<tr>
<td>Brazil</td>
<td>The Constitution, Article 5, 182 &amp; 184 (1988)</td>
<td>Public use, social interest, or for purposes of agrarian reform of rural property which is not performing its social function</td>
</tr>
<tr>
<td>Mexico</td>
<td>The Expropriations Law (1936)</td>
<td>Infrastructure development, conservation of history or culture, national security, public benefit, equitable distribution of wealth preservation ecological balance and natural resources</td>
</tr>
<tr>
<td>South Africa</td>
<td>Expropriation Act, No 63, Definitions &amp; Article 2 (1975)</td>
<td>Public purpose and certain other purposes if the purpose is connected with the administration of the provisions of any law by an organ of State</td>
</tr>
<tr>
<td>US</td>
<td>The Constitution, 5th Amendment, existing case law including Kelo v City of New London, 2005</td>
<td>Private property can be taken for public use; has been interpreted to include property development</td>
</tr>
<tr>
<td>UK</td>
<td>Town and Country Planning Act (1990)</td>
<td>Planning and public purposes if it is suitable for and required for development, redevelopment or improvement; or is required for a purpose which it is necessary to achieve in the interest of proper planning of an area</td>
</tr>
<tr>
<td>Singapore</td>
<td>The Land Acquisition Act, Section 5 (1966)</td>
<td>Public purpose, by any person, corporation, or statutory board for public benefit or public interest projects, or for any residential, commercial or industrial purposes</td>
</tr>
</tbody>
</table>


Compensation

As mentioned before, what is meant by public purpose has never been concretely defined in the LAA. Further in 1962, the government amended the LAA to relax the conditions and allow land to be acquired for a private company “which is engaged in or is taking steps for engaging itself in any industry or work for a public purpose”. Over the years, it became very clear that the government’s declaration of public purpose could not be challenged. Once the state declared its intention to acquire land by citing LAA and public purpose, the only aspect which could be adjudicated in the courts is the amount of compensation. Of course, monetary compensation presumed
and presupposed the existence of ownership of land. As in the colonial period, the interests, rights and livelihood dependence of women, sharecroppers, agricultural labourers and other persons who drew their livelihoods from land but had no legal entitlements over it, were never considered.

There are many studies which show that for every owner of land who is displaced by a project; at least four to five people dependent on the land tend to lose their livelihood. The LAA has been used to acquire land for industrial projects, mining, large dams and other infrastructure projects. But even sixty years after independence, despite many promises and policy pronouncements, there is no central legislation for the resettlement and rehabilitation of those displaced.

The LAA was again amended in 1984 with far reaching changes, many of which facilitated acquisition of land for companies. A revised list of activities were included which could be defined as public purpose. This included “the provision of land for a corporation owned or controlled by the State”. Unlike Part VII of the Act, where private companies have to fulfil certain preconditions if the government wishes to directly acquire land for them, industrial development corporations of the state governments do not have to fulfil any such criteria and are thus free to acquire land in the name of public purpose and lease it out to companies at subsidised rates. Every state has its own infrastructure and industrial development corporation, which is now the principle means by which the government “attracts and facilitates” private investment in the state. For example, the West Bengal Industrial Development Corporation had acquired land in Singur, West Bengal in order to give a 99-year lease to the Tata Company for their automobile factory.

A significant proportion of the natural resources appropriated by such projects are common property resources (CPRs), i.e. those resources over which groups or communities of people have shared rights of control and access. These include community pastures, community forests, waste lands, common dumping and threshing grounds, watershed drainages, village ponds, rivers, rivulets as well as their banks and beds. As can be expected, most of the people dependent on the CPRs are tribal peoples, dalits, and other landless and marginal peasants. In Orissa, 30 percent of the one million hectares of land acquired for developmental projects between 1951 and 1995 comprised forests and about 28 percent comprised other CPRs.
It is the state’s power of eminent domain which is used to appropriate resources on such a large scale. The power overrules and overrides even the Fifth and Sixth Schedules of the Constitution, which ostensibly give protection to tribal communities by restricting the transfer of land from tribals to non-tribals in nine states of the country. Apart from the Constitution itself, there are several state laws prohibiting land transfers in tribal areas, which have been violated with impunity. Despite the famous Samatha judgement of the Supreme Court in 1997, which reiterated the rights of tribal communities over their land, the state continues to sign MoUs with companies and gives away land in tribal areas for mining or other development projects. The consent of the communities is rarely taken by due process and these projects yield no benefits for the local people. The Perspectives team visited Kinnaur district (Himachal Pradesh), which has a predominantly Scheduled Tribe population, in June 2009. Private firms such as Jaypee were acquiring land for Hydro Electric Projects, were flouting State land transfer laws in the process and bypassing the requirement of the consent of the communities. The story is similar in many places in Orissa, Jharkhand, Chattisgarh and the North-Eastern states. We witness a definite bias in the saga of development and displacement. Though tribal peoples constitute only 8 percent of our population, they constitute 40 percent of those displaced by development projects.

The state, through its institutions, policy measures and legislations, has always tried to and succeeded in extending its control and ownership over land and other natural resources, or in influencing the way these resources are utilised and rights over them distributed. In this process, it has invariably preferred and privileged men over women, dominant castes over lower castes, mining companies over tribal peoples, big dams over traditional water harvesting structures, landlords and rich peasants over agricultural labourers and small peasants, real estate and shopping malls over small scale industry, industry over agriculture, and individual ownership over community ownership. If we understand these processes, then we come a little closer to grasping why there are so many and so varied conflicts around natural resources.

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The Land Acquisition Act provides for payment of compensation to those who have an interest in the acquired land. This is the only substantive entitlement which the government is obliged to discharge. The payment of compensation is intended to reduce hardship caused by the compulsory acquisition. But there are several aspects of the scheme of compensation which cause injustice to the persons affected. First, the connotation of compensation in the law has a limited meaning. It is equated with the value such land would fetch in terms of money when sold or the notional value of land in the market. Additionally, a solatium amount of thirty per cent of that compensation is paid to reduce injustice caused by the vagaries of the market. The compensation amount so paid does not make up for the whole range of losses, social and economic resulting from forced eviction. Social losses relate to, among others, social disruption and emotional trauma suffered by the affected people. No value is attached to these losses in the computation of compensation. The social and cultural impact of displacement has simply been ignored in the scheme of compensation. It has been externalised. The loss of land is primarily conceived in economic terms as loss of income derived from its cultivation. Even when land is viewed as economic loss, the notion of compensation does not include in it the loss of access to common property resources the benefits of which cover a sizeable part of the income of the poor. It ignores multiple life-supporting facilities obtained by people from these resources which, if purchased from the market, would require additional income. Thus, as reparation for economic deprivation caused by the loss of land, the notion of compensation in law is inadequate. The market value which constitutes the basis of its determination cannot replace the land or benefits forgone. The law has, therefore, been severely faulted for this inadequacy as also its unfairness in ignoring multiple losses.

Secondly, the law is narrowly fixated on the individual title holders of the land as its valid claimants. It does not recognise the existence of a collective entity called the 'community' which is more than the sum total of individuals with interests of its own. The law excludes from its purview loss of rights collectively enjoyed by the affected persons as a community and, in the process, repudiates the social environment and tradition built over centuries.
The scheme of compensation is even more iniquitous due to its narrow legal understanding of what constitutes rights and interests. The law and its practice recognise only rights and interests which are backed by tenancy laws and valid documentary evidence in support of it. This understanding is insensitive to a range of rights and interests on the acquired land which are either governed by forest laws or customary practices not recognised by tenancy laws and not supported by any legal document or a valid authorisation from a competent official functionary to this effect. The compensation is paid to persons who raise their claim before the competent authority and only those who possess valid proof of their interest in land in terms of the norm above can lay such a claim. Thus, a whole category of interest holders, i.e. tenants, sharecroppers who operate on informal contracts, agricultural labourers who work for the landowners on the acquired land for a wage, poor persons who have no shelter of their own and have established their homestead on the acquired land, others who enjoy a variety of concessions, uses, privileges on private land based on custom/tradition or oral contract and occupants of government land eligible for regularisation are not taken cognisance of for payment of compensation. These interest holders cannot adduce any documentary evidence to support their interests in land. This flawed understanding of the law ignores the social reality of agrarian relations.

The other aspect of the scheme of compensation relates to the method by which it is determined. The law provides that the compensation would be computed on the basis of the 'market value' of the land. The 'market value' has not been defined in the Act. Only matters to be considered and excluded for awarding compensation have been outlined. This leaves the government with the freedom to devise its own method of determination of the 'market value' which is usually worked out on the basis of sale/purchase transactions. If land transactions do not generally take place in an area, an imputed market value is worked out. One method of doing this has been to capitalise income for a specified period (usually 15 years) from the concerned land. Where land market exists, the practice of the government with regard to the determination of market value is based on an average of the registered transactions (sale/purchase) of a similar quality of land in the vicinity of the land acquired over a period of 3-5 years. This practice is unjust for several reasons. It does not recognise the imperfections of the market. It assumes that the land market is fully developed.
which is not so in India. The other presumption is that the transactions have taken
place between willing buyers and sellers, which in many cases of acquisition of land
is not true. It also supposes that buyers and sellers are equal in terms of knowledge,
market information, staying and bargaining power and urgency. This is usually not so.
The transactions arrived at between parties in such a situation cannot reflect the
correct market value. Besides, land valuation in official transactions are typically
undervalued so as to avoid the registration fee and other taxes. The value of land is
also affected by many regulatory restraints and control over use such as zonal
restrictions, imposed densities, use for non-agricultural purposes\(^{39}\). The laws
protecting Scheduled Tribes prohibit any transfer of their land to non-tribals.

But the more fundamental objection to the determination of market value lies
in vesting the power of valuation in the government. The value of land is solely
decided by the government which is an interested party in the transactions involved in
acquisition. This assessment is not carried out by an independent agency or
professional valuers\(^{40}\). The practice is considered both iniquitous and undemocratic. It
is iniquitous because the market value undergoes radical upward revision after the
land is transferred to the project agency. A vast gap is thus created between post and
pre-acquisition value of land. As a result, the benefits of appreciation in value of land
after acquisition entirely go to the transfeeree. The restrictions on buyers other than
farmers to obtain agricultural land have an depressing effect on its price. The natural
resources tied to the land such as underground aquifers, minerals, etc are not valued in
this arrangement as the government claims sole ownership of such resources. The
upshot of these arrangements is that the valuation reflected in market transactions
does not represent even the real market value of that land not to mention the
inappropriateness of the market value criteria itself for determining compensation
amount. Not surprisingly, therefore, the discourse on the subject has thrown up a
number of alternative suggestions to do justice to the displaced persons.

Firstly, with regard to the nature of losses deserving to be compensated, there
is now a fair degree of convergence in the proposition that the multiple dimensions of
losses suffered by the displaced people must be taken into account for compensation

\(^{40}\) ibid
entitlement. Ethical problems encountered in assigning economic values to some of these dimensions notwithstanding, economic theory has grappled with this problem which makes it possible to quantify the losses in monetary terms, however, controversial or unsatisfactory. Secondly, the compensation regime must necessarily accommodate all rights and interests whether they are backed by any valid proof or not. The range of such compensation for each category of interest holders should be transparently worked out. Thirdly, the market value as the basis for determining compensation may be substituted by 'replacement value', i.e. the value at which a similar quality of land at the resettlement site or nearby can be purchased. Fourthly, the market value may be assessed not on the basis of transactions in the pre-acquisition stage but in terms of enhanced value which the land acquires after the project work has been initiated. Fifthly, the loss of life-supporting facilities accruing from common property resources may be adequately compensated by developing similar facilities in the resettlement colony. Sixthly, a far greater number of persons than those losing land or access to it on account of compulsory acquisition are displaced owing to the pressures generated by project activities over a period of time. They should be appropriately included in the comprehensive rehabilitation plan and the project must bear the cost of their rehabilitation as well. The norms of their entitlement should be worked out transparently.

Undervaluation of Compensation

The only significant reparation for displaced persons guaranteed by law is the payment of monetary compensation for compulsorily acquired individual assets, mainly land or houses. However, the manner in which the law is framed and interpreted ensures that the displaced land-owner or house-owner is always the loser. Lokayan in 1982 documented the trauma undergone by the 21,094 families in the 100 villages submerged by the Srisailam project in Andhra Pradesh. The report states: The government has conceived and executed the Srisailam project... without taking into consideration the human problem seriously. The disbursement of compensation (in cash) did not encourage plans for resettlement. In the disbursement of compensation there appears to have been widespread corruption. Large and rich farmers managed to receive compensation, for both house sites and land lost, at reasonably competitive terms; people with low economic and social status did not get fair compensation for
the property lost. The people were neither educated nor taken into confidence regarding the various issues involved in computing compensation, evacuation and rehabilitation. Except for a few educated people, the overwhelming majority (95 per cent in the sample) were not conversant with the relevant provisions of the Land Acquisition Act. The Government made no effort to educate the people in this regard. This led to ‘legal cheating’ of the people. State power, including police power was used in a most brutal manner to evict the villagers. The Government had no rehabilitation programme worth its name. [quoted in Paranjpye 1990:182–183]

Some of the major problems leading to the undervaluation of compensation are as follows: The practice is to pay compensation for lost fixed assets like agricultural land at the prevailing market rate, calculated as an average of registered sales prices of land of similar quality and location in the preceding three or five years. However, it is an open secret that most land transactions in India are grossly undervalued to evade registration fees. Therefore, the ousted receives a rate which is much below the market rate, and the solatium of 30 per cent (or even 100 per cent as is being proposed in a new draft Land Acquisition Act (LAA) Bill under consideration with the Government of India) is far from enough to bridge the gap between the market and the registered prices. In Scheduled Areas (areas with high tribal concentration listed in the Constitution for special state protection), the problem is compounded by the fact that the law restricts sale of land by tribals to non-tribals to prevent tribal land alienation. This otherwise progressive measure has the unintended outcome of further depressing the market price of land and quantum of compensation to the tribal land oustee.

Land and houses are paid for at the alleged market value rather than ‘replacement value’. To consider only one typical example, the Fact-finding Committee on the Srisailam Project (1986) found that the replacement value of one acre of dry land was around Rs 5000, and for one acre of wet land Rs 13,800. The compensation actually paid (including solatium) was only Rs 932 and Rs 2,332 respectively. In this way, the amount paid as compensation was five times less than the amount that would have been required by the oustees to purchase agricultural land of equivalent quantity and quality. The Fact-finding Committee found a similar discrepancy in the amount of money paid as compensation for houses. In their survey,
the villagers set the value of a stone house at Rs 11,564 and a hut at Rs 2,500. However, the Government paid an average of Rs 5,561 for stone houses. For huts, the government paid an average of Rs. 645—that is, one-third of the value estimated by the villagers.41

Typically land prices shoot up sharply around any large project because of enhanced demand for land and in anticipation for irrigation, likewise houses are depreciated in value for age. In this way, oustees are not compensated for their land or houses at rates which would enable them to buy land or construct houses elsewhere similar to those that are lost. In projects like the SSP, the Gujarat government is providing land to oustees purchased at open market prices, and this has been found to be much higher than the rates at which compensation was paid. Compensation is only for persons in possession of undisputed legal title. In any average Indian village, the tyranny and corruption of the patwari or village accountant charged with the responsibility of maintaining land records ensures that land records are neither accurate nor updated, and this complicates the chances a land-owner will be able to prove title and secure compensation. Tenants, sharecroppers, wage-labourers, artisans and encroachers are usually not considered eligible for compensation because they do not have legal title to agricultural land, whereas they are paradoxically the most vulnerable and in need of support. Community assets like grazing grounds and forests, which again may be critical for the livelihood of the poorest, are not compensated for under the LAA. The value of the land is calculated as on the date of the gazette notification and interest is liable to be paid only from the date of taking possession up to the date of payment of full compensation. The LAA thus does not take into consideration the escalation of the market value between the time of notification and the date of actual possession. The limited provisions in the LAA to challenge the rate of compensation are, in practice, inaccessible to the indigent and illiterate oustees, because they may not be aware of the legal nuances or else cannot afford the expensive remedy of courts. Even those that are able to access courts fritter away a substantial proportion of the gains that they achieve in legal costs. The Srisailam Fact-Finding Committee noted in this regard: Only those landowners who were familiar with the legal details of the Land Acquisition Act — and who had connections in the city — took their cases to court. Others who were unaware of the Act lost their

41 Fact finding Committee on the Srisailam Project 1986:258].
opportunity to appeal because they accepted the initial compensation payment without protest. Those who went to court had to spend considerable sums of money on lawyers’ fees and other expenses. In some cases, a percentage of the money awarded in compensation was taken by the lawyers — many of whom charged far more than their usual fees. Significantly, the courts ruled in favour of all those who appealed — ordering increases in compensation ranging from 12 to 254 per cent. However, in most cases, the appellants benefited little owing to the high legal costs involved. [Fact-finding Committee on the Srisailam Project 1986:258] Payments are delayed, uncertain and the oustee is vulnerable to graft in the disbursement of compensation.

The legal provision that the state creates for compensating the damage does not take into consideration all the dimensions of damage inflicted upon the displaced. As land is acquired, the most tangible damage inflicted upon the displaced is the loss of income and wealth that the oustees used to enjoy. While creating the legal provision of compensation it is often overlooked that losses of this sort do not figure only in landlessness. The process also creates joblessness, homelessness, marginalisation (families losing economic power) and loss of access to common property. The equity based legal provision should take care of all these losses. In reality, the compensation is calculated on the basis of the property rights alone and thus a substantive part of tangible damage remains uncompensated. Again, to follow the Rawlsian perspective, the displaced are also denied liberty and opportunity with respect to the assets that they used to control. Bases of self-respect are also seriously damaged due to loss of the group’s cultural space and identity. The dismantling of a community’s social organization, the dispersal of formal and informal networks in the people’s lives also has a cost. The equity-based concept of justice should take care of these costs. The state, however, creates legal provision only for the damage of tangible asset in the form of property. Consequently, the equity-based concept of compensation remains unrealized even in the contemporary world.

Considered in this framework, this chapter focuses on compensation, rehabilitation and welfare policy with particular reference to ousters whose land and houses are submerged under the Kalinga Nagar industrial project in Orissa. Since the existing legal process for compensation heavily depends on the land acquisition act (LAA) 1894. The government of Orissa acquired land in Kalinga Nagar on the basis
of land acquisition act 1894. The acts empower the government to acquire any land for public purpose or for the use of company by prior notification and paying compensation to the owner. The compensation is based on current market value of similar land in similar use. Apart from compensation for the land acquired there are also provisions for payment for certain types of damages associated with the acquisition of land.

**Governmental initiative towards compensation, and rehabilitation: an incomplete effort**

Strangely, no Central Government in the country has ever made any attempt to incorporate the provision for rehabilitation for the project-affected families through legislation although as early as 1985, the State of Madhya Pradesh enacted a law for resettlement and rehabilitation that did not apply to Central Government projects but to irrigation and power projects of the State. The Karnataka also enacted a rehabilitation law in 1987, which has the same limitations like that of the Madhya Pradesh State legislation. The Maharashtra Government enacted a Rehabilitation Act in 1986 that received the approval of the President in 1989. Four other States of India, viz. Andhra Pradesh, Tamil Nadu, Orissa and Gujarat issued Government Orders/Resolutions on rehabilitation of families affected by development caused displacement 42.

The political parties of this country however, never made it an issue in their election campaigns, particularly at the national level. At this point one should make it clear that rehabilitation of people affected by development projects does not mean monetary compensation and resettlement. Rehabilitation means restoration and/or improvement of the living conditions of the project-affected families, not just giving them some money, which in most cases are spent by them towards loan repayment and sheer domestic consumption. So what was really needed was a law and to produce a nicely worded policy document. Policy documents serve many important purposes and most important of them is that they satisfy the international funding

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42 Saxena 2006.
agencies. The World Bank and the Asian Development Bank have already prepared their rehabilitation policies.

Recently, after the stiff resistance and widespread people's movement against land acquisition the Prime Minister of India said in the press that the Central Government will prepare a rehabilitation policy for the country within 3-months and the Finance Minister stated that the tie between the farmer and land is 'sacred' and could not be severed! (The Statesman, 09 & 10 January 2007) The Department of Land Resources of the Ministry of Rural Development published the NPRR on 17th February 2004 (Gazette of India, Extraordinary Part-I, Section I) just on the eve of the Parliamentary Election held in May 2004. One may wonder quite logically that why this much-waited policy document was not placed in Parliament for debate when the house was in session just a few months back. One may also ask that why there was no effort on the part of the Central Government to formulate a bill based on this policy in order to make a piece of legislation like Land Acquisition, Resettlement and Rehabilitation Act, which would have made it legally mandatory for the Government to make arrangement for rehabilitation for the millions of people affected by development projects. These questions are raised simply because of the fact that everyone knows that good policies are not enough and the already existing colonial Land Acquisition Act of 1894 would always prove itself to be more powerful than this nicely worded Government policy document (Guha 2005). So, before reviewing the actual text of NPRR one should keep it in mind that the Government has formulated this policy in a bureaucratic way rather than going through the democratic and legislative processes available in the country. The policy makers like before have again produced another beautiful document without being backed by any legislative and statutory power. In fact the Central Government of India, though not in a popular way, had reviewed the problems of land acquisition in the past by different high-powered expert committees. It would suffice to say that the strongly worded recommendations of those committees were shelved and development projects continued to displace people as they did during the colonial period. So there is sufficient reason to be sceptical about these recent policies on resettlement and

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41 A comprehensive introduction to and review of rehabilitation policy and law in India is to be found in Walter Fernandes and Vijay Paranjpye (eds.) (1997) 'Rehabilitation Policy and Law in India: A Right to Livelihood'.
rehabilitation since these are not backed by research findings done by experts since the Independence of India.

Compensation, Rehabilitation and Resettlement in India: A policy history

At the national level, the first policy draft was prepared in 1985 by a committee appointed by the department of tribal welfare when it found that over 40 per cent of the DPs and PAFs 1951-1980 were tribals (Government of India 1985). The next draft came from the ministry of rural development eight long years later in 1993 and the third in 1994. In response to which the civil society alliance struggling for a national rehabilitation policy proposed its own draft to the ministry in 1995, as mentioned earlier. There was silence till 1998 when another draft came out but the ministry that prepared it also prepared amendments to the Land Acquisition Act 1894. The above alliance found about 50 of the policy acceptable but thought that the amendments rejected all the principles enunciated in the draft policy. So they came together again to dialogue with the ministry and work on alternatives. Many principles evolved out of this interaction. A meeting convened by the minister of rural development in January 1999 ended with an implicit unwritten understanding that a policy would be prepared first and that any amendments to the Land Acquisition Act would be based on the principles it enunciated. However, the newly promulgated policy seems to ignore the whole process. In the scenario of growing unemployment the policy could have revived one of the earlier practices where till 1986, the T. N. Singh Formula (1967) stipulated that the parties concerned should give one job to every displaced family. But increasing mechanisation has reduced the number of unskilled jobs. This is another instance where the government has failed to take responsibility for PAFs and also making them beneficiary to the supposed benefits of development.

The process that gave impetus to the new economic policy of 1991 had actually begun in the 1980s. It meant opening up of the Indian economy to the private sector and decrease in government expenditure in the social sector. This market-led economy resulted in a faster growth rate of 6 to 8 per cent in the 1990s. Unfortunately, benefits of this growth have largely gone to monopoly houses and

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multinationals. Rising living costs and higher unemployment have increased the misery of the majority of population in India. As far as rehabilitation of those displaced by development projects is concerned it was not surprising that planned development immediately after independence, specially the growth of core sectors like power, mining, heavy industry and irrigation, displaced a large number of persons. Conservative estimates put this figure to be between 30 to 50 million persons. Only about 25 per cent of this number was resettled and the rest either died or took the road to poverty. All this took place in the name of national interests. In the era of new economic policy of liberalization and globalization, the entry of private sector in the arena of development has increased the demand for land. This simply means more displacement and resultant problems in livelihoods and lifestyles of those displaced. Under the New Economic Policy, we have to almost take for granted that large-scale displacement will occur as an integral part of liberalization. Consequently, the Committee of Secretaries, Ministry of Rural area and employment formulated the National Policy for Resettlement and Rehabilitation of Displaced Persons and drafted the Land Acquisition Bill in 1998. The policy recognized the need to rehabilitate people but the bill locates rehabilitation in the statute book by mentioning that where a law exits, those eligible for rehabilitation should apply to claim it. However, no full fledged law came into existence.

Several State Governments and various policies in the water and energy sector have addressed issues relating to Resettlement and Rehabilitation in the past decade. The National Policy on Resettlement and Rehabilitation formulated by the Ministry of Rural Development (2003) drew from many of these experiences, including the recommendations of the Hanumantha Rao Committee (1998) that was constituted by the Ministry of Power to look into rehabilitation in the Tehri Project. India had no national resettlement and rehabilitation policy for a long time. Only three States, Maharashtra, Madhya Pradesh and Punjab, had state wide resettlement and rehabilitation (R&R) policies. The Maharashtra Project Affected People's Rehabilitation Act of 1976, amended in 1986, is the most comprehensive. Other States have issued Government Orders or Resolutions, sometimes sector-wide but more often for specific projects. Two national parastatal companies, the National Thermal Power Corporation (NTPC) and Coal India Limited (CIL) have completed

46 http://www.vigyanprasar.gov.in/comcom/inter53a.htm
47 nac.nic.in/communication/perspectives_on_the_r&r.pdf
and issued R&R policies consistent with the World Bank policies. These affected projects across the nation. Many organizations in India had lobbied for a national rehabilitation policy. Through these movements against displacement and for R&R, various issues like the right to livelihood, the right to adequate housing, the right to education as well as customary rights of communities came to be recognized. While there is no national resettlement policy, land acquisition in India is covered by a national law, the 1894 Land Acquisition Act (LAA) and its subsequent amendments. The LAA allows for land acquisition in the national interest for water reservoirs, canals, plants, fly-ash ponds, struggle within and outside the government.


National Policy on Resettlement and Rehabilitation, 2003

The NPRR had always been looked down upon as a super-diluted, pro-industry quick fix. Walter Fernandes, director of the North Eastern Social Research Centre, Guwahati, had then noted: (The 2003 policy) would push thousands of families below the poverty line. Others had regarded it as eyewash. Conservative estimates put the number of families displaced by development projects alone (displacement due to processes such as urbanisation are not included) at over 20 million up to 1991. Various studies have put the figure between 2 million and 56 million. Of them, 75% of families (as per government records) are awaiting rehabilitation. This policy simply ignored this huge section of people, whose basic human and constitutional rights have been violated, by refusing to address ways of granting them much-delayed justice.

48 The World Bank's OD 4.30 requires a review of the legal framework for resettlement in preparing a resettlement plan.
49 http://his.com/~mesas/resindia.htm
50 Engendering Resettlement And Rehabilitation Policies And Programmes In India, Report of the workshop held at the India International Centre on September 12 and 13,2002 organised by the Institute of Development Studies and ActionAid, India with support from DFID, URL http://www.ids.ac.uk/ids/KNOTS/PDFs/NarmadaWshop.pdf
52 http://www.pib.nic.in/release/release.asp?relid=31832&kwd
54 Manju Menon, Resettlement and rehabilitation: Moving from an inadequate policy to a bad one, URL: www.infochangeindia.org/analysis33.jsp - 64k
The drawbacks associated with this policy were manifold. The policy was relevant only for projects displacing more than 500 families in plain-land, and 250 families in hilly areas. For a policy to establish a lower limit is absurd. Although the policy pays special attention to the cause of scheduled tribes - which is commendable - some issues remain inadequately addressed. One is compensation in monetary terms for the loss of customary rights and use of forest produce, and for those settled outside the district/taluka. Money cannot compensate for loss of livelihood or access to forest produce. Furthermore, the policy provided no scope for participation of people and a policy that was about an issue that is likely to affect the lives of a large section of people, most of whom are already marginalised, and which was debated and discussed actively in the early 90s by NGOs, academics and grassroots organisations, was finalised without any public participation\(^5^7\). Hence, this policy which formed the precursor of the recent policy was considered highly inadequate considering the fact that it came after a period of long wait and struggle.

**National Rehabilitation Policy (NRP-2006)**

As already mentioned, the latest policy is considerably different from NPRR-2003, though it is almost equally criticized and questioned. According to the press release by the Government, the new Policy and the associated legislative measures aim at striking a balance between the need for land for developmental activities and, at the same time, protecting the interests of the land owners, and others, such as the tenants, the landless, the agricultural and non-agricultural labourers, artisans, and others whose livelihood depends on the land involved. The benefits under the new Policy shall be available to all affected persons and families whose land, property or livelihood is adversely affected by land acquisition or by involuntary displacement of a permanent nature due to any other reason, such as natural calamities, etc. The Policy will be applicable to all these cases irrespective of the number of people involved\(^5^8\). Among other provisions, the policy provides for life-time monthly pension to the vulnerable persons, such as the disabled, destitute, orphans, widows, unmarried girls, abandoned women, or persons above 50 years of age, special provision for the STs and SCs include preference in land-for-land for STs followed by SCs, land-for-land,

\(^5^7\) ibid

\(^5^8\) http://www.pib.nic.in/release/release.asp?relid=31832&kwd
to the extent Government land would be available in the resettlement areas; preference for employment in the project to at least one person from each nuclear family within the definition of the affected family, subject to the availability of vacancies and suitability of the affected person; training and capacity building for taking up suitable jobs and for self-employment; scholarships for education of the eligible persons from the affected families; preference to groups of cooperatives of the affected persons in the allotment of contracts and other economic opportunities in or around the project site; wage employment to the willing affected persons in the construction work in the project; housing benefits including houses to the landless affected families in both rural and urban areas; and other benefits. A strong grievance redressal mechanism has also been provided for by the policy including standing R&R Committees at the district level, R&R Committees at the project level, and an Ombudsman duly empowered in this regard.

Promises apart, the provisions of the latest policy are being criticized on a number of grounds including their failure to meet the theoretical promises at the practical level. Like the previous policy, exclusion of victims is a major drawback of the present policy. The call for "the active participation of affected persons" (clause 1.2) in the process of resettlement and rehabilitation is not reflected in the processes of development of the project. The affected persons do not have the right to be consulted prior to finalization of their lands as the project site. Under Clause 6.1, in cases where displacement is 400 or more families en masse in plain areas, or 200 or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in Schedule V and Schedule VI of the Constitution of India, the Appropriate Government shall declare, by notification in the Official Gazette, area of villages or localities as "an affected zone of the project". The affected persons have no say in the process of determination of a project site even if it is on their lands. There is no provision for consultation with the affected families during the final preparation of the Social Impact Assessment (SIA) and Environmental Impact Assessment (EIA) reports prior to their submission to the expert group for examination. The Commissioner and the Administrator for Resettlement and Rehabilitation are not independent of the State control. Also, the Administrator for Resettlement and Rehabilitation, who is an officer not below the rank of District Collector, to oversee the resettlement and rehabilitation

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59 Ibid
plan, can delegate his duties to an officer below the rank of a tehsildar, a provision that shall seriously affect the rights of victims. One of the notorious provisions of the Policy is that it allows further displacement of non-project affected persons from their land in the process of resettling the project affected families in a particular resettlement zone. Even the provisions meant for the safeguard of the SCs and STs are not being considered adequate. These are few of the logical drawbacks that have rendered even the recent policy insufficient for the proper rehabilitation and resettlement of the displaced.

Rehabilitation and Resettlement Bill, 2007

This Bill was introduced at the time when Land Acquisition (Amendment Bill 2007) was to provide for rehabilitation and resettlement of people displaced by land acquisition or any other involuntary displacement. This would include not only those whose land was acquired but also those such as landless labourers, local artisans, traders etc. whose livelihoods or markets may be affected. Until 2003, India did not have a national level rehabilitation policy. The National Rehabilitation and Resettlement Policy was framed in 2003 and revised in 2007. The proposed Bill provides legislative backing for the policy. The Bill sets up a system for implementing and monitoring rehabilitation and resettlement, with monitoring at the district, state and national levels. It lists the benefits—monetary, housing/land, employment—that a displaced family would be entitled to. All rehabilitation costs are to be borne by the requiring body (which needs the land for the project). The Bill differentiates between the process for large-scale displacement (more than 400 families en masse in the plains or 200 families en masse in the hills or tribal areas), and when fewer families are displaced. For large-scale displacement, the government shall conduct a social impact assessment study, notify the affected area, and create a rehabilitation and resettlement plan. The Bill also lists various entitlements (See table-1 below). In other cases, basic infrastructural facilities have to be provided at the resettlement area. It is not clear whether these families are entitled to the benefits listed in the table.

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Table 2.2: Proposed rehabilitation policy 2007 and resettlement benefits

<table>
<thead>
<tr>
<th>Criteria for eligibility of benefits</th>
<th>Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any affected family whose house has been acquired or lost</td>
<td>Land for a house (without payment) of up to 250 square metres of land in rural areas or up to 150 square metres of land or a house of up to 100 metres carpeted area in urban areas if available in the resettlement area, agricultural land or cultivable wasteland equivalent to the land lost up to one hectare of irrigated land or two hectares of un-irrigated or cultivable wasteland; shall be in the name of each person included on the record of rights</td>
</tr>
<tr>
<td>Affected family owning agricultural land whose land has been acquired or lost or has been reduced to marginal farmer</td>
<td>A house with at least 50 square metre carpet area in rural areas or 25 square metre in urban areas; or the family can opt for a one-time financial assistance for house construction Preference for land-for-land in the command area of the project; if land is not available or family opts not to take the land, they shall receive monetary compensation; fishing rights in the reservoirs One-time compensation of at least Rs 10,000 to each person on the records of rights</td>
</tr>
<tr>
<td>BPL affected family without land and has continuously lived in an area for 5 years before declaration</td>
<td>Allotment of agricultural land instead of acquired land One-time compensation of at least Rs 15,000 per hectare to each person on the records of rights</td>
</tr>
<tr>
<td>Family with land lost for an irrigation or hydel project</td>
<td>Allotment of wasteland instead of acquired land Minimum of Rs 25,000 for construction of a shop or shed</td>
</tr>
<tr>
<td>Allotment of agricultural land instead of acquired land</td>
<td>Displaced affected family with a cattle shed Minimum of Rs 15,000 for construction of a cattle shed</td>
</tr>
<tr>
<td>Allotment of wasteland instead of acquired land</td>
<td>Affected artisan, small trader, or self-employed person Minimum of Rs 25,000 for construction of a shop or shed</td>
</tr>
<tr>
<td>All affected families</td>
<td>All affected families</td>
</tr>
<tr>
<td>All vulnerable affected persons</td>
<td>For land development projects instead of land-for-land or employment</td>
</tr>
</tbody>
</table>

One-time compensation for moving and transportation costs of at least Rs 10,000 Minimum of Rs 500 per month for lifetime pension Developed land or build-up space within the development project in proportion to the land acquired, subject to some limits
<table>
<thead>
<tr>
<th>Linear acquisitions for railway lines, highways, transmissions lines, laying of pipelines, and other projects requiring a narrow parcel of land</th>
<th>Minimum of Rs 20,000 in addition to other benefits under the scheme through which land is acquired to each person on the records of rights. Benefits listed in this Bill shall also be given if the person becomes landless or is reduced to a small or marginal farmer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family affected by land acquisition on behalf of a requiring body</td>
<td>Monthly subsistence allowance of 25 days minimum agricultural wages* per month for one year; allotted houses or land shall be free of encumbrances and may be in joint names of wife and husband</td>
</tr>
<tr>
<td>Land acquisition on behalf of a requiring body: Affected family not provided agricultural land or employment</td>
<td>Rehabilitation grant of 750 days minimum agricultural wages; If requiring body is a company, it is required to give the option of taking 20-50% of this rehabilitation grant as shares or debentures</td>
</tr>
</tbody>
</table>

When land is acquired on behalf of a company, rehabilitation benefits include: preference for employment and construction labour if available; preference for contracts, shops, or other economic opportunities; skills training; training facilities for entrepreneurial development; and scholarships and other opportunities. There are several concerns about this Bill. The entitled benefits are different between those displaced by larger projects (greater than 400 families) and those by smaller ones. Land acquirers for linear projects such as highways may be able to break up the projects to avoid some requirements. The Bill uses non-binding language in several instances while listing benefits. Examples include “wherever possible”, “if Government land is available”, “subject to availability and suitability”. The Bill appears to be written primarily for displacement from rural areas. In case of loss of land or house, the Bill proposes compensation as agricultural land or house (which may be in rural or urban areas). The Bill does not require the replacement of an urban house with another urban house or plot. Regardless of the amount of land acquired, an individual whose land has been acquired, lost, or reduced is entitled to receive a maximum of one hectare of irrigated land or two hectares of unirrigated land. For receiving benefits, the unit is a “family”. The Bill has gender-bias. The definition of family includes ‘unmarried daughters’ and ‘minor sons.’ If a family has a son and a
daughter, both above the age of 18, the unmarried son would qualify for benefits as a separate family, whereas the daughter would not.

**NPRR vis-à-vis Vulnerable Communities**

NPRR in its preamble says, 'the Policy essentially addresses the need to provide succour to the asset less rural poor, support the rehabilitation efforts of the resource poor sections, namely, small and marginal farmers, Scheduled Castes and Scheduled Tribes who have been displaced. A close study of the various provisions, however, doesn’t say the same.

NPRR has special provisions for PAFs of Scheduled Tribes, but treats Schedule Castes families with general PAFs. The policy merely reiterates the fact that the PAFs of Scheduled Caste category enjoying reservation benefits in the affected zone shall be entitled to get the reservation benefits at the resettlement zone. For STs the policy says each Project Affected Family of ST category shall be given preference in allotment of land and will be re-settled close to their natural habitat in a compact block so that they can retain their ethnic, linguistic and cultural identity and very generously mentions free of cost land for community and religious gathering.

The price paid by the government for the loss of CPRs and customary rights/usages of forest produce to each tribal PAF shall be additional financial assistance equivalent to 500 days minimum agriculture wages, i.e., Rs 43,310. It is difficult to think of a sustainable livelihood for tribals without forest. The forest is not just the source of fuel wood or other minor forest products, but is their natural habitat and central to their existence and cultural heritage. The government probably expects them, who are not used to monetised economy and urban ways of living to buy cooking gas stoves and build concrete houses with the money provided. We shall see later the instance where the previous attempts at rehabilitating tribals have failed miserably. This is enough to show the ignorance on the part of the government of the tribal way of life and their culture and that the government has learnt nothing from its own R & R experience of dealing with various kinds of displacement in the last 50 years. The government’s sincerity in resettling tribals in their natural habitat is visible from the fact that it would have to pay only 25% higher R&R benefits in monetary terms if it fails to do so.
The policy very categorically mentions that the rehabilitation grants and other monetary benefits proposed would be minimum and applicable to all project affected families whether belonging to BPL or non-BPL category. States where R & R packages are higher than proposed in the Policy are free to adopt their own packages. However, it is a known fact that the states would always prefer to choose where their obligation is minimal. So, no doubt if Gujarat government which has a provision for maximum 5 acres of land backtracks on its promise, and MP government, which has a ceiling of 50 families, chooses to use it only when a project displaces 500 families in the plains and 250 in hilly areas, DPD, and scheduled areas.

The government's sincerity and the cash component of the policy are further visible in these provisions. It says any PAF owning house and whose house has been acquired may be allotted free of cost house site to the extent of actual loss of area of the acquired house but not more than 150 sq. mts of land in rural areas and 75 sq. meter of land in urban areas. However, only PAF of BPL category shall get a one-time financial assistance of Rs. 25000/- for house construction and Non-BPL families shall not be entitled to receive this assistance (emphasis added). There is no compensation for loss of the house except for the fact that government would provide one-time financial assistance of Rs. 5000/- as transportation cost for shifting of building materials, belongings and cattle etc. from the affected zone to the resettlement zone.

It is a commonly known fact that BPL families are generally landless; they are casual labourers or sharecroppers. But still the policy makes provision for a one-time financial assistance equivalent to 625 days of minimum agricultural wages. In case of displacement a Displaced PAF shall get a monthly subsistence allowance equivalent to 20 days of minimum agricultural wages per month for a period of one year up to 250 days of MAW. A generous estimate of minimum agricultural wage at the rate of

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61 Perhaps government is more worried about total increase in cost of the project and loosing FDI by multinationals, or higher interest it will have to pay on the loans from IFIs.
62 The Below Poverty line is defined for Urban India as consumption worth Rs. 264 per person a month and Rs. 229 per person per month in rural areas at 1993-94 prices, as defined by Planning Commission. The calorie intake for rural poor and urban poor is 2,100 and 2,400 a day respectively.
63 Please note there is no provision for compensating the loss of extra land and the house of PAFs.
64 “Displaced family,” means any tenure holder, tenant, Government lessee or owner of other property, who on account of acquisition of his land including plot in the abadi or other property in the affected zone for the purpose of the project, has been displaced from such land or other property (NPRR 2003-3.1 i).
Rs 86.62\textsuperscript{65} per day would add up to Rs 37,500 or Rs 15,000 depending on the category to which one belongs. This is the price the government proposes for livelihood of its citizens who are already at the margins of development. There is no attempt on part of the government, visible from these policy guidelines at making the life of DPs or PAFs sustainable, except for increasing their risk of impoverishment and disempowerment. The past experience has been that many a time the small-scale farmers, sharecroppers, and casual labourers in absence of any employment, adequate land, credit facilities, technology, seeds, etc. fail to adapt to the new conditions at the resettlement zones and are forced to marginalisation and become casual labourers at the project itself, if nearer, or further migrate to any other place.

The policy provides no safeguard against double or triple displacement which has happened in the past due to poor planning of resettlement process and project assessment, especially in the Dam related submergence and displacement. This is one of its major lacunae, in absence of such a safeguard chances are that these communities can be displaced again and again over a period of time.

The instances above suggest a greater thinking and study on the part of the government towards R & R measures of the tribals and other vulnerable sections to understand their needs better. The policy needs to be made more participatory and transparent in order to instil self-confidence and pride\textsuperscript{66} within PAFs because more often than not displacement and R & R has been a disempowering process due to sheer apathy of the officials and absence of a genuine effort on the part of the state in helping rebuild and rehabilitate their livelihood. In fact the whole process needs to be seen not as welfare and relief, as in times of natural disasters, but as their Right to resettlement and rehabilitation.

Absence of any provision for penalty for R & R officials in the policy is another serious lacunae and is clearly visible where it says, “It is expected\textsuperscript{67} that the

\textsuperscript{65} Ministry of Labour, Govt of India minimum wages fixed under the Minimum Wages Act, 1948

\textsuperscript{66} Pride, that’s what Nehru meant when he talked about suffering in the interest of nation. But the bitter experience of R & R process has often left PAFs with feeling of being cheated. For example, what would one say of this, the people of Kevadia village, whose lands were acquired for building residential colonies of SSP officials way back in 60s has not be rehabilitated yet by the government.

\textsuperscript{67} ‘Expected’, ‘may be’ is the vocabulary of the policy which doesn’t translate in to right to displacement of DPs and PAFs or any accountability on part of the government.
appropriate Government and Administrator for R&R shall implement this Policy in letter and spirit in order to ensure that the benefits envisaged under the Policy reaches the Project Affected Families, especially resource poor sections including SCs/STs” (NPRR-1.5). Where as the Land Acquisition Act, 1894 categorically mentions that 'any person or agency obstructing the process of acquisition on conviction before a magistrate is liable to imprisonment, for any term not exceeding one month, or to fine not exceeding five hundred rupees or both.’ What are we supposed to make of this? Simply interpreted, it means the government can displace its citizens whenever it wants on the pretext of ‘development’ or ‘public interest,’ but is not accountable for their resettlement.

The NPRR in turn sets up a ‘Disputes Redressal Mechanism’ and ‘Grievance Redressal Cell,’ the terms of which are to be fixed by the appropriate government. Even there, only the Disputes Redressal Mechanism has provisions for accommodating the representatives of PAFs and specifically mentions women, SCs and STs, NGOs and MP/MLA of the area, but not in Grievance Redressal Cell. In a way no PAFs can move to court unless and until government decides to give them the power to do so or at the most they can appeal to the National Monitoring Committee at the Centre.

**Orissa first Rehabilitation and Resettlement Policy Guidelines**

Before the formulation of the national policy on Resettlement and Rehabilitation of project affect families (NPRR. 2003) by the government of India in February 2004, there was no unified and comprehensive rehabilitation policy for project displaced/affected persons. Rehabilitation work was done by the concern minister and State Government as and when required. The secretary, Irrigation in erstwhile ministry of energy and irrigation, Department of Irrigation, Government of India in his letter no. 17(9)80-P.I. dated 19 may 1980 to all State Government, requested to ensure protection to the weaker section of the society while farming project in the state.\(^{68}\) It was also requested to give government lands to the oustees and if this was not available land from the command area had to be acquired from the larger landholders and distributed to them.

Initially, the Government of Orissa also did not have a comprehensive Resettlement & Rehabilitation policy. The state government of Orissa, too, has followed an ad hoc approach all these years. Development agencies addressed the resettlement issues as they arose in a purely ad-hoc manner. Project-specific or sector-specific decisions, rules, or notifications mostly guided resettlement operations which mostly related to dam-induced displacements. There was no uniformity in these guidelines and often the affected people received resettlement assistance that differed markedly from one project to another. The fact is that resettlement in India has never received the attention that it deserves. It was only in 2004 that a national policy on resettlement was announced. This, however, failed to meet the expectations, especially of civil society groups. In 2007, the policy was reissued with some changes which too failed to fully meet the expectations of civil society groups.

In Orissa, it was the Rengali Dam project, which began in 1971, that brought the resettlement issue into the open. In 1973, the State Government announced a resettlement policy for the Rengali Dam, which was its first such initiative. Until then, there was no resettlement policy in Orissa for people displaced by dams or other projects. Whatever assistance that the people received from the government was in response to organized protests, which were often led by rich farmers. The following is a very suitable description of the situation then prevailing in Orissa: "The policy depended on the organizational and bargaining strength of the displaced people and the degree of success of their protest movements. There was no definition of a displaced person and a displaced family or standardized compensation norms for acquisition of different types of properties such as land, trees, ponds, wells, etc."

Orissa has since moved further in enacting resettlement policies, and has good policy resources by the standards of other states in India. In addition to project-

specific guidelines, Orissa developed policies for three sectors that include water resources, industries and mining. The World Bank supported policy for the water resources sector that came into force in 1994 marks an important stage in the evolution of resettlement policies from project specific policies to sector specific policies. (Government of Orissa, 1994) The private sector has also not lagged behind, and a number of private industries and mining companies have also adopted their own resettlement policies/guidelines in recent years.

**Orissa Resettlement and Rehabilitation of Project-affected Person Policy, 1994**

Orissa has passed several government orders since 1977. Based on these, a policy was promulgated by the state government for displaced persons in the irrigation sector in 1994. This is known as the Orissa Resettlement and Rehabilitation of Project-Affected Persons Policy, 1994. Then resettlement and Rehabilitation (R&R) Policy 1994 of the Government of Orissa aimed at integrated holistic development of displaced persons and project affected persons who suffer loss for the cause of the project, with special attention to tribals and weaker sections. The main objectives of the policy were (a) Land acquisition and payment of compensation (b) R & R benefit to displaced persons/family and project-affected persons and (c) economic rehabilitation programme. The administrative hierarchies for implementation of the policy are R & R directorate at the state level, rehabilitation Advisory Committee at the project level, special land acquisition and resettlement and rehabilitation officer at field level. As per the policy, the survey and identification of the affected area and people was done by government organisation and NGOs. Participatory Rehabilitation Planed was than implemented with monitoring and evaluation. However 1994 R & R policy of the government of Orissa is for water resources sector funded by World Bank project, its implication for other departmental like energy resources including hydro-electricity and thermal energy, Department of Industry, Department Mining and Department of Forest, which creates and manages Wild Life Sanctuary, are significant, and apparently irreversible. Although this sector specific approach is a positive step towards better R & R.

The policy has been recently revised. Some of the positive features of the policy are: (i) It provides for people's participation, with the involvement of APs, in
mapping and designing the villages, resettlement sites, identification of the infrastructure required, development of common resources, etc.;

(ii) The sponsored resettlement colonies will be provided with civic amenities like schools, wells, village ponds, community centers, dispensaries, connecting roads, electrification, etc.; and (iii) A booklet containing the salient features of the R&R package, with a clear mention of the benefits and amenities, is to be prepared and distributed to the APs prior to the issue of identity cards.

The limitations of the policy are: (i) The policy is limited to water resource projects and not to all types of development-induced displacements. However, there is a note that “Government by notification may also include any other work/project of public utility for adoption of this policy”; (ii) In line with the provisions of the Land Acquisition Act, market value and not the replacement value is the basis for compensation; and all the liabilities (mortgage, debt, or other encumbrances) on the land held by APs at the time of acquisition are deemed to be transferred to the land allotted to them at the rehabilitation site, thereby increasing the chances of impoverishment73. Gujarat initially followed Maharashtra’s land for land scheme and later passed several government orders. The best-known package was that of the Narmada. But Gujarat does not have a state policy on rehabilitation as such. Andhra Pradesh, Tamil Nadu and Rajasthan have passed several government orders, most of them in connection with externally aided projects.

The UNDP initiative for a new Resettlement and Rehabilitation Policy 2006

Under globalizing influences, the developmental activities rapidly increasing in almost all sectors in the state, and because of its rich natural resources, Orissa is now fast becoming an attractive destination for large corporates, Indian as well as multinational, looking for investment opportunities. Among the well known steel companies that are heavily investing in the state are Tatas, Mittals, Posco (South Korean steel giant). There are many more that have landed to start mining and other industrial activities. With the rapid rise in the level of development activity, the scale

73 Mohapatra, L. K. (1999), Resettlement, Impoverishment and Reconstruction in India. New Delhi, Bikash Publishing house
of displacement has now become only more massive than before. These new developments have revived old memories of displacement disasters and created new apprehensions in the minds of local people about their future. New challenges simply cannot be met by the earlier resettlement policies, however. Supported by the United Nations Development Programme (UNDP), the Government of Orissa has now issued a new resettlement policy. The Orissa Resettlement and Rehabilitation Policy, 2006 is designed as a response to new challenges arising from a development process triggered by globalization, liberalization and privatization.

The policy has its origins in a major UNDP initiative. In January-June 2001, United Nations Development Programme (UNDP), United Nations Industrial Development Organization (UNIDO) and Department for International Development of the United Kingdom (DFID) co-financed a project, supporting Government of Orissa's preparation of a new industrial policy. This included a comprehensive analysis of industrial situation, identifying the state's comparative advantages and opportunities and making specific suggestions for the industrial policy. The recommendations were approved by the government, resulting in promulgation of the Industrial Policy Resolution (IPR) on 3 December 2001. The objective of this policy was to attract investment as a means to accelerate the development process. However, the IPR was also quick to sense the urgent necessity of putting in place a mechanism to address resettlement issues that would inevitably arise in the wake of rapid industrial and infrastructure development, and noted that a new state-wide resettlement policy be developed which will ensure that the interest of all stakeholders, especially the local population, are adequately protected.

As a follow up to this recommendation, the UNDP in 2002 prepared a proposal to assist the Government of Orissa with a comprehensive resettlement policy draft, and

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submitted that to the DFID for funding support. DFID appraised the proposal and agreed to provide the necessary funding support for it. With UNDP as the implementing agency, the Project commenced from July 2003, finally ending on 30 September 2005.

To get the process started, UNDP created a position of coordinator for resettlement policy project in the already existing small UNDP office in Bhubaneswar, which was established in 1999 in the wake of a disastrous cyclone with the specific task of assisting its victims. The position was filled by an Indian Administrative Service officer on deputation from the Government of Orissa, who brought with him useful experience of administration issues in tribal areas. Although the project started in July 2003, but the progress was slow in the first year. The project gain momentum from June 2004, only when UNDP appointed a senior consultant for the project with the specific responsibility of preparing the draft resettlement policy.

Finally, the UNDP submitted the draft resettlement policy to the Government of Orissa in July 2005 for their consideration and promulgating it as a policy, as appropriate. The government immediately initiated action for adoption of the policy, involving process of consultation within the government with department involved in a range of resettlement-related matters, such as the acquisition procedures, the approval of resettlement plans, allocation of budget for resettlement, the monitoring of resettlement operations, and so on. Subsequently, a committee of senior official considered the draft and introduced certain modifications in the in light of the wider concerns of the government.

While the policy adoption process was in progress, the government on several occasions publicly indicated its commitment to a comprehensive state-wide policy to address resettlement problems, but nothing much happened for a long time. It took the killings of 12 tribal people in Kalinga Nagar on 2 January 2006 that finally jolted the government to look at I UNDP draft resettlement policy, and speed up the process required for adoption as a state policy. Within a week of the incident, the government as a knee-jerk reaction hurriedly set up a ministerial committee to finally: the policy, and with some changes in the UNDP draft the government quickly came out with its own policy draft. In May 2006, the government finally announced the much awaited
policy to resettle and rehabilitate people who would be displaced by new industries and other development projects\textsuperscript{77}.

Although the resettlement policy which the government has issued differs in some respects from the UNDP draft policy, yet: it has retained the substance of its innovative provisions intended to support both investment and improvement in living standards of the affected people. One major feature of the Orissa government policy is that in case of industrial and mining projects the displaced persons can also opt for shares in the company. Specifically, the policy provides that at the option of the displaced family the project may issue convertible preference share up to a maximum of 50 per cent out of the one-time cash assistance\textsuperscript{78}. In fact, the Orissa policy is an improvement on the national policy as well, and it can be further strengthened in response to emerging needs. A leading Indian newsmagazine has described this UNDP-initiated Orissa resettlement policy as the best policy in India\textsuperscript{79}. This involuntary resettlement policy demonstrates the commitment of Orissa to an investment climate which is both pro-business and concerned with human welfare. It has the potential to open opportunities for those affected by such investments to be better off than previously.

**Orissa policy, 2006 and the National policy, 2007: Comparative Assessment**

The Orissa government brought out a rehabilitation and resettlement policy in May 2006. Considerable inputs provided by the UNDP went into its formulation though not all its suggestions found acceptance. The policy is considered to be an improvement on the National Policy\textsuperscript{80} and has been described us the best policy in India\textsuperscript{81}. These observations presumably compare the Orissa policy with the National Policy, 2003. But the National Policy, 2003 has already been revised and the National Rehabilitation and Resettlement Policy, 2007 has been notified. Therefore, it may be

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\textsuperscript{78} ibid


\textsuperscript{81} ibid
relevant to compare it with the National Policy, 2007. The Orissa policy scores over
the National Policy in respect of the following features.

It applies to persons displaced on account of the acquisition of land carried out through negotiations also and not merely those affected as a result of compulsory acquisition by the government. If the process of negotiation includes land procured/purchased directly by the corporates/private parties (as seems to be the case since the definition of 'project area' includes land which is acquired/alienated/purchased) it is certainly more equitable, just and humane in its applicability. On the issue of coverage, unlike the National Policy which restricts it to those affected by projects satisfying the specified numerical benchmark of the level of displacement, the Orissa Policy does not place such a barrier and is therefore, more liberal.

The norm of eligibility for R&R (Rehabilitation and Resettlement) benefits in the Orissa Policy updates the list up to the 1st January of the year in which the physical displacement is scheduled. This formulation for the coverage of displaced persons is superior to the one adopted in the definition of the 'affected family' in the National Policy.

The definition of 'family' is more inclusive in the Orissa Policy than in the National Policy. It recognizes unmarried daughters and sisters over thirty years of age, a widow or a woman divorcee as a separate family for the benefit of rehabilitation and is, thus, gender neutral. Additionally, it empowers physically and mentally challenged persons and minor orphans by conferring the status of a separate family. The National Policy continues to show bias against these social groups.

The Orissa Policy includes, as one of its objectives, the need for ensuring environmental sustainability through the resettlement/rehabilitation process which the National Policy omits to incorporate. The Orissa has also shown requisite foresight in mandating a comprehensive communication plan for awareness creation with the involvement civil society at the cost of the project. No such provision has been made National Policy. The Orissa Policy has also provided for dovetailing normal development programmes with the resettlement and rehabilitation package to be made available to the displaced community on a p basis. This is intended to be in addition to

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the benefits which a displacee is entitled to under the Policy. The National Policy does not mention of it.

The Orissa Policy clearly stipulates that no physical displacement be effected before the completion of resettlement work while the National Policy is less equivocal on this issue. It merely requires adequate progress in the rehabilitation and resettlement to be ensured before physical shifting of the affected persons and, therefore, shows less sensitivity to inconvenience faced by the displaced persons.

'Multiple displacements' does not even attract the attention of the National Policy. The Orissa Policy recognizes the harassment involved to the affected persons who have gone through the experience before and therefore, provides for, at least, additional 50 per cent compensation above the normal compensation to mitigate it. The Orissa Policy also requires steps to be taken by the rehabilitation and resettlement agency to adapt the resettled people in the new habitat including development of a cordial relationship with the host community in the resettlement site. Though measures required for this purpose have not been spelt out the concern itself for the social trauma involved in adjustment to the new physical and social environment has not been reflected in the National Policy.

On the most meaty issues of rehabilitation assistance, the Orissa Policy marginally scores over the National Policy in some respects. It classifies projects into five types: a) Industrial; b) Mining; c) Water Resources/National Parks; d) urban and linear projects; e) any other projects. It makes provision for employment only in Type a) and b) projects while in type c) projects, it replaces provision for employment with assistance agricultural land. Type d) projects have no provision for either land or employment while type e) projects are silent on the package of benefits which would be notified later. Linear projects are also required to provide employment to one member of the family where total displacement is caused. The provision for employment, however, is restricted to one member of the pre-displacement family. But, like the National Policy, there is no assurance in respect of this benefit in the Orissa Policy. The policy only talks of giving preference in the matter of employment in the project. A facilitating condition has, however, been added that the eligibility age would be relaxable by five years and the project authorities would be required to notify their employment capacity in advance. In terms of concrete benefits, this
provision is as valueless for the displacee to get a job as in the National Policy. The only difference is that one time cash compensation ranging from 5 to 1 lakh where employment cannot be provided has been added in the Orissa policy. The sliding scale of compensation here is linked to the relationship of the nominated member with the displaced family, with a minor son receiving the maximum amount, while a widow or a woman divorced getting the lowest amount. The discrimination made inter-se between members of the family is both irrational and indefensible besides being a potential source of conflict within the family. On the issue of vocational training and skill development, the National Policy makes a provision for scholarships which the Orissa Policy does not do.

A mandatory provision has been made for allotment of 2 and 1/2 acres of irrigated agricultural land or five acres of non-irrigated agricultural land to each ST displaced family in type (c) projects while the displaced families of all other social categories would be provided with two acres of irrigated or four acres of non-irrigated agricultural land. But this assurance suffers from lack of will to effectuate it even in respect of STs since a cash equivalent of Rs one lakh per acre for irrigated and Rs.50,000/- per acre for non-irrigated land including the cost of reclamation or at the rate decided by the government in the case of non-availability of land has been added. Type (d) projects neither provide for employment nor land. The National Policy also provides for a rehabilitation grant to the affected families who have not been given land or employment. Both policies opt for cash option as the most convenient mode of getting out of the assurance to provide land or employment.

On the provision of homestead land and house building assistance, the Orissa Policy is more liberal than the National Policy. It provides for at least 1/10 of an acre for this purpose along with a house building grant of Rs, 1,50,000/- for projects in rural areas and 1/25 of an acre with a house building grant of Rs.1,50,000/- in urban areas. The National Policy is conservative in respect of both the size of land and the cash grant for construction of house admissible.

It is in the respect of benefits to the landless encroachers without even homestead that the Orissa policy show greater sensitivity than is to be found in the national policy. The landless encroachers will get ex-gratia equivalent compensation admissible under land acquisition act for a similar category of land provided the
encroachment is of ten years duration continuously and unobjectionable. The entitlement, however, would be restricted to one standard of acre encroachment. The homesteadless person would similarly get cash compensation against encroached homestead of \( \frac{1}{10} \) acre in rural and \( \frac{1}{15} \) in urban areas subject to above conditions. This would be in addition to the cost of structure. In such cases where encroachment is objectionable, only the cost of structure would be compensated.

The national policy contains some provisions which are either supper to the Orissa policy or are omitted to the latter. This include the Social Impact Assessment, gamut of physical amenities and social infrastructure to be provided at the resettlement site, detailed enumeration of rehabilitation benefits, norms of compensation assessment, unutilised acquired land, procedure for preparation of rehabilitation plan, updating of land record, arrangement of grievances redressal and monitoring. The national policy has also placed a distinct focus on Tribal Development Plan with restoration of alienated tribal land, setting land right, provision for forest to replace the forest lost and additional financial assistance. The national policy is therefore, more compressive version of Orissa policy. But on the basic issue there is little by way for a major difference. Neither of two polices assures replacement land for land lost by the tribals or a sustained and dignified employment. Both polices ignore right of the people for compensatory entitlement. Both polices have failed to take note of the ten fold risks which the displaced face and provide risk-wise mitigating counter-risk action. The end result is that the beneficiary of either police would continue to face acute vulnerability to spiral of impoverishments.

**Disjunction between Policy and Practice**

The official version of Orissa's modern history tends to reflect the developers' self-image, and focuses on the growth rate, and the development of roads, railways, airports, sea ports, mobile phone networks and the exploitation at last of the state's minerals. What is left out of this version is the realities on the ground. If displaced people suffer - so did people in "developed" countries. The suffering is often seen as necessary sacrifice for overall development - the cost of progress. (eventually, it is believed that most people's standard of living even though "trickle down economics" has been shown to be most people can see clearly that poverty is getting worse. officials often say "there was nothing here before we came" – only "mud huts".

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According to R & R policies formulated by the World Bank, IUNDP, as well as the Governments of Orissa and India, people's standard of living is supposed to go up, not down. It is generally acknowledged that this hardly ever happens in practice (Mathur 2008 p. 179).

This exemplifies the reality gap at the centre of Resettlement & Rehabilitation. Between what is supposed to happen and what actually happens is a gulf - often no correlation at all. Since most projects have Social Impact Assessment, since displaced people are not made part of the decision-making process, and there is no proper check on the sof R & R, or even proper ways to assess this, let alone any disciplinary action against officials responsible for failure, this reality gap remain almost completely outside the approved discourse on R & R.

To bring it in, we need to address several issues of fundamental importance on the ground that finds little or no mention in most of the literature displacement. One set of issues involves Cultural Genocide and the sacrificing of people's quality of life, along with all the non-measurable factors that make up their culture and community.

Another basic problem is that in most, if not all the project areas, various forms of intimidation and coercion appear to be standard procedure towards people unwilling to be displaced, by police and administrative authorities as well as by a mafia network or local goondas. This intimidation also operates around people who have been displaced from traditional communities to a resettlement colony. In a traditional tribal village, differences of status are relatively less; everyone is of approximately equal status and value. Once displaced from their village and land, they find themselves at the bottom of a hierarchy that is often extremely hostile, cruel and corrupt.

This corruption is conspicuous by its absence from most models of R & R, and at the heart of the fundamental discrepancies between theory and practice. In the awarding of contracts, for constructing a colony, and at every stage of a displacing project, corruption is rampant (Dash 2008). This starts with the deals mining companies make, but percolates down to the lowest level. Workers often attest that even labouring jobs, that should be theirs by right, can only be had by paying bribes. Villagers living below Nalco's bauxite mine have informed us that they gave bribes of
several thousand rupees just to get preferential selection for labouring jobs up the mountain paid at just Rs. 68/- per clay. Often, it seems that large bribes are more or less mandatory even to get standard land title documents, which small-scale farmers need as a basic security, since without *patta*, they are not entitled to compensation for their land - and often, even after bribes, no documents materialize. Corruption only exists among lower officials because it is tolerated at higher levels. In November 2003 the Minister of Environment & Forests was captured on camera receiving a large bribe from an Australian mining company for leases in Orissa and Chhattisgarh, with words that reveal much about modern attitudes to money: "*Paise khuda to nahi, par khuda ki kasam, khuda se kam bhi nahi.*" ("Money isn't God, but by God, it's no less than God"). *(Sunday Express*, 16 November 2003).

This materialism did not start from India, and the reality gap appears to be a feature of most development projects. A study by social anthropologist David Mosse finds almost no correlation between policy and practice in a major agricultural project funded by the DFID (Dept For International Development of the UK Government) in Madhya Pradesh, for which he was a consultant *(Cultivating Development: An Ethnography of Aid Policy and Practice 2005)*.

Most of Orissa's first wave of industrial projects have been notorious for their lack of adequate R & R, such as the Rourkela steel plant, the Hirakud, Upper Kolab and Indravati dam projects, and also Nalco in Koraput, sometimes cited as a model of good practice, but actually, as we shall see, anything but. So the present situation in Orissa involves several high profile struggles of people opposing displacement in Orissa. Three companies in particular face protracted opposition, in a series of projects some of which have already caused displacement or are currently causing agitation, while others (e.g. iron-ore mines) have yet to be finalized!: Tata at Kalingnagar and Gopalpur (steel plants), Naraj (thermal power plant near Cuttack), Dhamra (port), and north Orissa (iron-ore mines), Posco at Jagatsingpur (steel plant and port) and north Orissa (iron-ore mines), and Vedanta at Lanjigarh (alumina refinery), Niyamgiri (planned bauxite mine), Jharsaguda district (smelter & giant power plant), near Pari (university-cum-business-centre), and Gandhamardan (another bauxite deposit). Several other projects, which have recently displaced people, or where people have taken a strt resisting displacement, include the Utkal alumina
refinery, nuij plants and sponge iron factories by liliushan, Jindal and other co and the Lower Suktel dam.

The resistance to all these projects by people opposing displacement is of immense significance. From the viewpoint of the members of the Government of Orissa and GOI the protestors are holding up foreign investment worth many crores. From the viewpoint of protestors threatened with displacement, they are being treated with a fundamental injustice. The authorities do not understand or care that these people's whole lives are being adversely affected. What else is a government for if not to listen to and serve the distraught people? This is the essence of the reality, there is a gulf of difference in the understanding of those imposing and those suffering displacement.

Beside these two criticisms, there are others which grew out of the lengthy discourse and debate on the various shortcomings of this Act. The criticisms are as follows:

1. The Land Acquisition Act only deals with compensation and not rehabilitation of project affected persons whose lands have been acquired. The responsibility of the state towards the affected persons ends with the payment of compensation.

2. The Act considers the payment of compensation to individuals who have legal ownership rights over land. This means that under this Act no compensation is payable to landless labourers, forest land users and forest produce collectors, artisans and shifting hill cultivators because they do not have any legal right over land, although these groups of people are also affected when agricultural and forest lands are acquired for development projects. In West Bengal, the state Government had to make an amendment in the LA Act (it was done in the 1960s) in order to provide compensation to sharecroppers (bargadars), who also suffered loss of livelihood because of acquisition of agricultural land.

3. The Land Acquisition Act only recognises individual property rights, but not community rights over land. As a consequence, the usefructory rights of the tribal and non-tribal communities over common land do not find any place in this law. So when village common lands are acquired, no compensation in any form is provided to the village communities who derive various types of
benefits (e.g. cattle grazing, fuel-wood collection etc.) from these lands. The Land Acquisition Act does not have any scope for this kind of compensation for loss of common pool resources (CPR). Interestingly, in the vast rural areas of India, privately owned agricultural lands are also used as common grazing lands by the villagers in the post-harvest season. The Land Acquisition Act has no provision to compensate the villagers who may not be the owners of a particular piece of agricultural land but enjoyed usefructory rights of cattle grazing on this land after the harvest of the crops (Guha 2004b). It has already been discussed in the preceding section that no systematic and comprehensive study on land acquisition in West Bengal exists till today. There is no baseline empirical survey on the nature and extent of land acquired in West Bengal for various development projects, nor is there any research on the specific problems of application of the Central and State Acts to acquire land in West Bengal. Recently, Walter Fernandes and his team have undertaken a comprehensive macro-level empirical survey (sponsored by the Ministry of Rural Areas and Employment, Govt. of India and North-Eastern Social Research Council, a research oriented NGO) on the nature and extent of development induced displacement and rehabilitation in the 16 districts of West Bengal for the period 1951 – 1995. Being one of the research supervisors in the aforesaid research project for the South Bengal districts (Medinipur, Bankura, Purulia and Hugli), it is within the knowledge of the present author that the results of this survey may be published in future (personal communication with Walter Fernandes, 2000).

To conclude this chapter, the law of Land Acquisition jeopardises private interest for public interest and hence it denies an individual his right to property. It overrides the right of a person to own a property, so the law in general should be strictly construed. The strict construction of the Law of Land Acquisition has been emphasised by the court for the last 60 years as it does not hold the person whose property is being taken and the state at par. The owner of the property has no bargaining power with the state in such circumstances nor does he have a say in compensation; so its inevitable in the interest of equity that the law should be strictly construed and the procedure which provides for various checks and balances should by strictly complied with. Compulsory acquisition can be effective only in accordance with Acquisition because
it is an inroad into citizens right to property. On this matter the established law is that if from the purpose for which the land is acquired, it is apparent on the face of it that the purpose is not a public purpose and there can be no two arguments to construe it otherwise, means the act of the government is ultra vires so in this case the public purpose is justifiable i.e. courts can look into the matter. But when the purpose mentioned can be interpreted either ways of being a public purpose or not, it is not justifiable.

The compensation that the displaced persons would receive should be based on the principle of equity. The problem however is that the principle of equity is not always honoured in settling the compensation package. The full cost of creating collateral provision for maintaining life with dignity cannot be realized in a market-mediated transaction, firstly because many of the constituent elements of total cost cannot be translated in the language of the market economy. Secondly, for the elements for which the market instruments can work, efficient pricing cannot be done in many cases because of the inadequacy in the development of the institution of the market itself. Again, even if economic values are assigned to the damages, the problem remains with fixing the agencies that would bear the responsibilities. Private agents are unlikely to accept full responsibilities of compensating the displaced. To what extent the state would bear the cost depends on political power, which often works against the weaker section of the society. The equity-based principle of compensation can therefore be hardly adhered to.

The basic problem is that compensation is usually perceived only as the compensation for the loss of property rights on land. Land, however, is the basis of many other rights including the right to job. The principle of equity that states that a collateral provision for maintaining livelihood with dignity is necessary before a person is displaced, can hardly be honoured if the compensation is offered only on the basis of property rights on land. Furthermore the principle of equity is violated when the property rights on land remains ill defined. The equity-based justice is consequently denied to a section of the displaced persons. As the corporate enters in the land market, such weaknesses of compensation principles are fully exploited. The

82 In India, ‘the expression “rights” in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure holder or other intermediary and any rights or privileges in respect of land revenue’ (Article 31 A (2) B).
economic power of the corporate being stronger and the state in the era of globalization being an active participant in the process of expropriating the peasants, the scenario becomes more adverse for the dispossessed. This typically is what the peasants of contemporary India confront when the development-induced displacement takes place.

The Orissa Rehabilitation and Resettlement (R&R) Policy of 2006, echoes the policy of National Rehabilitation and Resettlement Policy of 2003, expecting a few modifications in the provisions. Both the policies suffer from several deficiencies, as they don’t reflect any considerable insights or basic principles to assess the losses of the oustees’ property and there are no special welfare measures or arrangements vis-à-vis displacement problem. It is interesting to note that the Rehabilitation and Resettlement (R&R) Policy of the Orissa, in its order, in the para-1 of the abstract reveals the effects of compulsory acquisition of land and displacement on Project Affected Families (PAFs) and the need for rehabilitation with utmost care and concern. But in practice it is quite antagonistic to the implementation of the Rehabilitation and Resettlement (R&R) package, and there is no proper concern, humanitarian approach and foresight as proved in the earlier studies on the issue of displacement. The policy is one-sided and does not show any consideration to the needs and aspirations of the displaced people.

The existing rehabilitation policy in Orissa does not safeguard against double or triple displacement, which has happened in the past due to poor planning of resettlement process and project assessment, especially in the tribal areas. This is one of its major lacunae. As a result the displaced tribals and other weaker sections are getting marginalized. Ultimately, this is causing large scale migration to urban centres. As all these people are not skilled they don’t find any considerable employment in urban set-up, and there they are forced to occupations like rag picking, rickshaw pulling, bonded labour, migrant labour and even begging.