CHAPTER VII
COMMUNITY INTEREST v. PRIVATE INTEREST: IMPACT ON LAND ACQUISITION LAWS

A property right is a collection of particular interests that relate to an object. Both individuals and the community have interest in the land either as owner, occupier or as beneficiary. So the right to property is considered as an inherent right exercised by various persons, over property, from the nomadic period onwards. Such interests, recognized by law and converted into legal rights, can be broadly classified into public right and private right.

When one of the persons connected with the right is the State and the other is a private person, the right is called a public right. Through the protection of such rights, the State protects the social interest. The term ‘public interest’ and ‘social interest’ are synonymous. Social interests are: (i) interest in general security, which includes safety from internal and external aggression and public health (ii) security of social institutions, such as government, marriage, the family and the religious institutions (iii) social interest in general morality (iv) conservation of physical and human resources (v) interest in general progress, especially economic and cultural advance; and (vi) social interest in individual life, requiring that each individual be able to live a human life according to the standards of the society.

7.1 Public Right under Indian Constitution

The theory of eminent domain is an essential attribute of the sovereignty of every State to take property for public use without the owner’s consent upon making just compensation. The doctrine of eminent domain operates as an ad hominem legislation, which involves great sacrifices for the purpose of State. From the Anglo-Saxon period itself, law recognizes the act of compulsory taking of private land by the State as causing a great legal injury to the owner of the land; and hence permits the

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3 For details, See Supra Chapter IV pp.57-76.
right of the owner to be compensated for the damage. Reckless use of right of *eminent domain* is not proper\(^4\); and an individual has a right to recover the property also.

The Directive Principles of State Policy contained under Part IV of the Indian Constitution provides that the State shall in particular; direct its policy towards ensuring that the citizens, men and women alike, have the right to an adequate means of livelihood\(^5\). It is further provided that the State shall, *inter alia*, within the limits of its economic capacity and development, make effective provisions for securing the right to work in cases of unemployment and of undeserved want\(^6\). These Directive Principles, though not enforceable by any court, are nevertheless fundamental to the governance of the country; and must be regarded as equally fundamental to the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work\(^7\), it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.

### 7.2 Recognition of Public Right under the Land Acquisition Act

Public right has been incorporated in the Land Acquisition Act by using the word ‘public purpose’\(^8\). The terms ‘public purpose’ and ‘acquisition of property’ under the Act have great significance in an individual’s property rights. Public purpose should be beneficial to society, that is, a purpose in which the general interest

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\(^5\) See, Article 39 (a) of Constitution of India.
\(^6\) See, Article 41, *Ibid*.
\(^7\) Article 38: “State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”
\(^8\) *Bangalore City Corporation Housing Society Ltd. v. State of Karnataka*, AIR 2012 SC 1395.
of the community as opposed to the particular interest of the individuals is vitally and directly concerned. The general interest of the community is the “touchstone” of public purpose. Whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as public purpose. The scope is not static but must change with the times, the state of society and its needs. Acquisition of property must be for the benefit of general public or in the national interest. Providing any benefit other than what is provided in the Land Acquisition Act 1894 may not be feasible to attract the provisions of the Act.

There is always a conflict between public interest and private interests in the field of acquisition of land. In a country like India, the gap between the haves and the have-nots is much wider than that in the developed nations. The proper approach is to consider the scheme as a whole and then examine whether the entire scheme of acquisition is for a public purpose or not. Public purpose is to be construed according to the spirit of the times and the needs of the society.

The meaning of the terms ‘public purpose’ and ‘public interest’ are co-related. Hence the statute includes within the term ‘public purpose’, acquisition of land for: (a) the provision of village sites, or the extension, planned development or improvement of existing village sites; (b) the provision of land for town or rural planning; (c) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government, assignment or outright sale with the object of securing further development as planned (d) the provision of land for a corporation owned or controlled by the State; (e) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State; (f) the provision of land to carry 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, (g) the provision of

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10 See, Section 3(f) of the Land Acquisition Act, 1894.
land for any other scheme of development sponsored by Government, or with the prior approval of the appropriate Government, by a local authority; (h) the provision of any premises or building to locate a public office, but does not include acquisition of land for Companies.

The Law Commission of India in its Report on Land Acquisition (1957) stated that any attempt to make a definite definition of the word ‘public purpose’ makes the concept rigid and leaves no room for alteration in the light of changing circumstances.

The word ‘includes’ used in the definition clause has much relevance. In *S.K. Gupta v. K.P Jain*¹², the apex court observed that the term ‘includes’ is used to enlarge the meaning of the words or phrases occurring in the body of the statute. It is so used that words or phrases must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. The matters enumerated under the aforesaid provision are not exhaustive. Any other matter of public benefit can also be treated as ‘public purpose’. The term public purpose is, thus, an elastic one¹³ having no precise definition or static connotation.

Whenever the government wishes to build roads or erect structure in places occupied by a private owner or if it wishes to impose curbs and restrictions in the interest of internal security or national self – preservation, the freedom of the individual to act or speak is infringed. So whenever public right is protected, the private right of an individual is curtailed.

¹¹ Para 37. There is only an inclusive definition which relates to village sites in districts. In other respect, there is no indication in the Act of any test for determines whether a purpose is a public purpose or not. A large number of suggestions have been received by us urging that we should clearly and exhaustively define the term ‘public purpose’ in an ever-changing world, the connotation of the expression ‘public purpose’ must necessarily change. If a precise definition is enacted, it would become rigid and leave no room for alteration in the light of changing circumstances. It would leave no room for the courts to adjust the meaning of the expression according to the needs of the time.

¹² AIR 1979 SC 734.

¹³ *Bhagwat Dayal v. Union of India*, AIR 1959 Punj. 544.
7.3 Private Rights

When a right is enjoyed by an individual, then the right is a private one. According to Roscoe Pound\textsuperscript{14}, interest in a society may be either \textit{individual} or \textit{social}. The individual interests are interests in one’s own life, in private property, in the freedom to make contracts, and in the freedom of expression. The essential feature of the private right is the exclusion of others from its use. Exclusion itself is a multi-faceted concept that relates to the type of object over which a public right is possessed by every member of the public. A private right is concerned only with individuals. So private rights are of an infinite variety and are enjoyed by individuals who happen to own certain property, who hold a certain office, who enter into a contract etc.

The most difficult question arising in relation to these individual and social interests is their relative ranking and importance; and the competing claims cannot be satisfied at the same time\textsuperscript{15}. Compared to the State’s interest over property, bundles of individual interest over the property are higher. Legal protection of the latter is far greater than that of the former. Individual interest in largess has to be developed along the lines of procedural protection and restraint upon arbitrary official action. When the two interests are in conflict with each other, the valuation of both interests is absolutely necessary to provide justice to the parties. This raises the problem of a “valuation of interests”. In this context some crucial questions arise: What determines or what should determine the value judgments that may have to be made in assigning preferences and priorities to one or another to the interests mentioned? Is the interest in general security superior to the individual interests in property protection and maximum self-development? Does the social interest in conservation of natural resources prevail over the individual interest in full exploitation of private property?

\textsuperscript{14} Supra n.1.

7.4 Valuation of Interests

An all India study about land sale reveals that only 1.75 percent of the land was sold during the period of early 1970’s and another survey in U.P found that over a period of 30 years (1950 to 1980) only 4.1 percent of agricultural land had been sold\(^\text{16}\). This is an indication of how far the people of India are interested in immovable properties acquired by them. Property is nothing but a basis of expectation, the expectation of deriving certain advantages from a thing, which we are said to possess in consequence of the relation in which we stand towards it\(^\text{17}\). If valuation of interest in a society leaves any leeway for the exercise of individual interest and social interest, there will necessarily be conflicts between those competing interests.

7.4.1 Vector-sum Approach of Individual Interest

The vector-sum approach\(^\text{18}\) is a method used for measuring the individual interest. It recommends first of all the investigation of the benefits to individuals that will flow from the rights being in effect and then the making of a similar tally of the costs to individuals' interests from recognizing the right.

With this information about costs and benefits, we can calculate an "array of interests" that shows how well-off each individual would be adhered to property rights ascribed. While considering the natural right, individuals are totally prohibited from interfering with natural resources which are beneficial to the people of all class. This approach helps to quantify the total interest of a person in a particular property.

For the better understanding of individual interests in property, various categories of interest in property have to be considered.


Modern human rights jurisprudence can be called the post world war II phenomenon. ‘Human rights’ means “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.” Human life, liberty and dignity are intermittently related to property rights. In the days of yore, the dignity of an Indian was measured in terms of the land occupied by him. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. In *Chameli Singh v. State of U.P.* the apex Court upheld the importance of house property in the social development of individuals. ‘Decent residence’ was, therefore, held to be an essential part of the right to equality, economic dignity and the right to live.

Universal Declaration of Human Rights, (UDHR) 1948 is a landmark in the history of human right movements and is the basic international pronouncement of the inalienable rights of all members of the human family. UDHR actually set up a common standard of achievement for all people and all nations. It protects the rights of an individual to hold property individually as well as in association with others, collectively; and mandates that no one shall be arbitrarily deprived of his property. UDHR further provides for the constitution of separate Commissions for the implementation of social and economic rights of individuals.

‘Right to live’ guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic

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20 See, Section 2(d) of the Protection of Human Rights Act, 1993.
21 AIR 1996 SC 1050.
22 Article 1(3) of UDHR aims to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting, and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.
23 See, Article 17 of UDHR, 1948.
human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the UDHR or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is his home where he has opportunities to grow physically, mentally, intellectually and spiritually. The right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads. The right to shelter does not imply the mere right to a roof over one’s head, but the right to the entire infrastructure necessary to enable one to live and develop as a human being. In *Dharam Pal v. State of Haryana*, it was held that the exclusion of land to the extent occupied by the structure and appropriate open area around the structure for the beneficial enjoyment of the property is valid.

### 7.6 Urban Land: Issues in Acquisition

According to the latest U.N. Report, nearly 29% of the Indian population lives in cities and it is going to increase by 40.7 per cent by 2030. Moreover, nearly 55 per cent of the urban people live in slums. The Report further states: women, children, widows and female-headed households are the most vulnerable groups who are the victims of environmental degradation; acquisition of land for widening of roads, construction of buildings for development activities, made urban people more vulnerable; and that the high demand for developed land area and house sites in cities and towns results in the escalation of land costs.

The poor sections of the urban community who are the worst affected, cannot ‘afford’ a reasonable housing facility in the emerging scenario of high land cost. They are forced to seek alternative housing options, viz. to settle in marginal land areas, on

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26 AIR 2009 SC 1580.
river banks, railway tracks, under flyovers, in parks and playgrounds or even on land sites reserved for designated social amenities like schools, community centres etc.

From the survey in the urban areas of Thiruvananthapuram Corporation, it is very clear that small holders of land are more concerned about their future when compared to persons holding larger extent of land.

### 7.6.1 Number of persons displaced either fully or partly under various acquisitions

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the Project / Persons</th>
<th>No. of Persons Displaced totally</th>
<th>No. of Persons Displaced partially</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Techno park Phase I &amp; II</td>
<td>72</td>
<td>116</td>
</tr>
<tr>
<td>2.</td>
<td>Railway over bridge, Pettah</td>
<td>4</td>
<td>64</td>
</tr>
<tr>
<td>3.</td>
<td>S.H widening, Nalanchira</td>
<td>12</td>
<td>84</td>
</tr>
<tr>
<td>4.</td>
<td>Airport Widening</td>
<td>17</td>
<td>36</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td></td>
<td><strong>105</strong></td>
<td><strong>300</strong></td>
</tr>
</tbody>
</table>

Out of the 105 respondents who were totally displaced, 34 persons were small holders (having less than 5 cents)
In Mohanlal Nanabhai Choksym v. State of Gujarat\textsuperscript{28}, the petitioners challenged the acquisition of their land for the purpose of establishing a vegetable market by Surat Municipal Corporation. It was averred that the lands in question were fully constructed and occupied by many tenants. However, the Court held that the State Government has the power to acquire any land within a market area, if it is needed for the public purposes under the provisions of the Land Acquisition Act, 1894 or any other corresponding law for the time being in force.

In the above circumstances, it is submitted that the Government has to formulate a National Urban Land Policy which aims at the optimum social use of urban land, the supply of adequate quantity at the right time and at a reasonable cost to various stakeholders, to encourage civil society, community and cooperative organizations to be involved in the field of land acquisition, development, construction and maintenance, and thereby preventing private players from speculation and promote flexibility in land use etc.

7.7 Acquisition of Tribal Lands

Tribal lands have a rich abundance of resources, hydrologic, mineral and forest and timber which makes them base land for various development purposes. The tribals who live in the forest or land adjacent to it are the most affected people due to the acquisition of such property for public purpose. Large-scale development projects in tribal areas have physically evicted significant numbers of the tribal community. About 40% of the total tribal population have been displaced by development projects. Such communities lack other skills to survive in varied environments.

Even though the displacement affects their right to life under Article 21, it could not be challenged if the land is acquired for the ‘public purpose’ under the Land Acquisition Act. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the concerned project\textsuperscript{29}.

\textsuperscript{28} http://indiankanoon.org/doc/497049/?type=print (visited on June 24, 2012).

The United Nations Environment Programme (UNEP) Report, 2003 cites the examples of the Karjan and Sukhi reservoirs in the State of Gujarat that displaced only tribals. The Balimela Hydro Project in the State of Orissa displaced a large number of people, 98% of whom were tribals. Similarly, in Upper Kolar Dam project, 96% of the evacuated people belong to tribal community. Hitherto, the government had turned a blind eye towards reality: common resources have a decisive role in the lives of the tribal community; farm production and household economy are generally handled and controlled by women, whose dependence on common property resources to earn or save income is greater than that of men and the loss of access to those resources results in the emergence of an unemployed and unemployable ‘housewives’.

However, a ray of hope is visible amongst the dark clouds. The present Minister for Rural Development, Shri Jairam Ramesh upheld the interests of tribals, who are displaced due the acquisition of forest and their dwelling house. He observed\textsuperscript{30} that, “the Centre has decided to revise the Land Acquisition, Rehabilitation and Resettlement Bill, 2011, for protecting the interests of the tribals and the sanctity of gram sabhas”.

7.8 Land Acquisition: Environmental Issues

Nature and environment are the basis of all economic activities. Soil, forests, mines, water, air and other natural resources are productive assets of an economy\textsuperscript{31}. Soil degradation and erosion lead to reduced and inferior quality agricultural output. The Constitution of India also emphasizes the importance of the protection of the environment\textsuperscript{32}.

\textsuperscript{30} See, \textit{The Hindu}, (Thiruvananthapuram edn., dated 19\textsuperscript{th} May 2012), p.15.
\textsuperscript{31} P. Arunachalam, \textit{Special Economic Zones in India}, (Serials Publications, New Delhi), p.263.
\textsuperscript{32} See, Article 48 of the Constitution of India which declares: “The State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country.”
Narmada Valley Development Project\textsuperscript{33} which is the single largest river development scheme in India and one of the largest hydroelectric projects in the world, will displace approximately 1.5 million people from their land in three States (Gujarat, Maharashtra, and Madhya Pradesh). The environmental costs of such a project, which involves the construction of more than 3,000 large and small dams, are immense. The project will devastate human lives and biodiversity by inundating thousands of acres of forests and agricultural land.

Damming the Narmada River will degrade the fertile agricultural soils due to continuous irrigation, and stalinization, making the soil toxic to many plant species. This largest dam under construction, the \textit{Sardar Sarovar}, if completed, will flood more than 37,000 hectares of forest and agricultural land, displacing more than half a million people and destroying some of India’s most fertile land. In \textit{M.C Mehta v. Kamalnath}\textsuperscript{34}, the Supreme Court categorically observed that “uncontrolled industrial development generating tones of industrial waste disturbed the ecological balance by polluting the air and water which in turn, had a devastating effect on the wildlife and, therefore, on the early efforts to protect the environment related to the protection of wildlife. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution”.

Increased and efficient environmental vigilance thus becomes necessary for containing the negative environmental impact of industrialization. Industrial pollution caused by large industries like petroleum refineries, textiles, pulp and paper, industrial chemicals, iron and steel etc. led to global warming and the spread of many diseases too.

\textsuperscript{33} \url{http://www.umich.edu/~snre492/Jones/narmada.html/} (visited on May 05, 2012).
\textsuperscript{34} \textit{AIR 2000 S.C 1997}. 
7.9 Private Property and Acquisition

A private property right is a collection of particular rights that relate to the control of an object. Land acquisition law in our country is strong in the idea of public welfare; and hence it is beneficial to everyone. But in the present world of economic liberalization, poor peasants, middle class men and local business people view the same as a Damocles’ sword. The very idea of acquisition is against the basic rule of property. According to property rule, no one is allowed to take a thing from its present possessor. So property rule protects the possessor. The term ‘compulsory acquisition’ comes under the liability rule which requires that the possessor shall be properly compensated.

In the early decades of the last century and even after independence large tracts of private land were acquired for different purposes with the help of Land Acquisition Act 1894. For example, Mulshi dam in Bombay presidency, Tungabhadra project in Madras presidency, Hirakud, Machkund, Sileru dams and Rourkela steel plant in Orissa, Damodar Valley Corporation in Bihar and West Bengal, Nagarjunasagar and Sriramsagar dams in Andhra Pradesh. Few years back, the West Bengal government’s plan to expropriate 10,000 acres of land for special economic zone to be developed by an Indonesian based Salim Group for the industrialization was obstructed by local inhabitants; and in the police firing, 14 villagers were shot dead and more than 70 were wounded.

On the basis of the thorough analysis of land acquisition hitherto undertaken, it can be seen that there are three broad areas of conflict between private interest and public interest:

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36 Louis Kaplow and Steven Shavell, “Property Rules versus Liability Rules: An Economic Analysis”, 109 H.L.R 757 (1996). Under property rule, when the possessory entitlements reside with the present possessor, no one could take anything from him. According to liability rule, a person is permitted to take a thing from its possessor but must then pass damages equal to its court-estimated value.


(1) Evaluation of the purpose and necessity of acquisition,
(2) Procedural aspects to sort out the interest of the evacuated people; and
(3) Proper relief to the affected persons.

The Government is the best judge as to whether a requisition was for a public purpose or not. Whenever a question or any dispute on that aspect is brought up or canvassed, the Court can only verify whether the opinion was formed by the Government duly and *bonafide*. When the primary object is personal gain, the purpose cannot be said to be public purpose\(^\text{39}\).

### 7.10 Violation of Private Rights under the Land Acquisition Act

On many occasions, acquisition of property under Land Acquisition Act 1894 encroaches upon the rights of the individual. Acquisition without proper evaluation of schemes, arbitrariness on the part of officials in providing adequate compensation, procedural irregularities, massive acquisition for corporate sectors etc. are some of the areas that warrant immediate attention.

A survey conducted by the researcher reveals that re-settlement provided under Techopark Phase I acquisition by the Government of Kerala is totally inadequate; 79 per cent of the respondents are not satisfied. With respect to the question: Are you satisfied with the re-settlement measures taken by the Government? If not, why? The data collected is tabulated as follows:

Only 21% of rehabilitated persons were satisfied with the measures taken by the government and 79% were dissatisfied with the re-habilitation by government.

Causes for dissatisfaction are:

- Adverse impact upon livelihood
- Allotted land not in proportion to the extent of acquired land
- Denial of hitherto enjoyed urban amenities
- Transplantation to an alien social environment

However, the new law, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013\(^ {40} \), which was passed in the Lok Sabha and Rajya Sabha and which proposed a resettlement and rehabilitation of displaced persons is not in consonance with the interest of the displaced people.

7.11 Effect of Private Right in the Absence of Proper Evaluation of Purpose and Necessity

Though several amendments have been brought about in the colonial legislation, the acquisition procedure remains the same as it was at the time of the inception of the Act. To democratize the acquisition process, the government must seek the involvement of persons likely to be affected; and this may soften the social, economic, psychological and ecological impacts of acquisition. After getting the proposal from the agency desiring the land; and before the issuance of preliminary notification, the government has to conduct a feasible study of the project in consultation with local inhabitants. Such studies shall be on the basis of the nature of the land, whether agricultural or unused land, the nature of the main occupation of the inhabitants, the financial capacity of the inhabitants, whether they can survive even after the evacuation, the financial power of the company for which the acquisition is made, the availability of the alternate land for resettlement etc.

7.12 Procedural inadequacies

The object of land acquisition law is to obtain private property for a public purpose. Such a law must ensure a speedy, efficient and cheap procedure by which such an acquisition can be effected. At the same time the procedure must be fair and equitable to the persons whose property is acquired. The notion of fairness is pertinent to accurate adjudication. The first theory of fair procedure may hold that individuals have a right to invoke all manner of procedures or are entitled to procedural rules under which they may advance their cause.

Functionally, the process culminating in the completed acquisition of land can be divided into the following stages:

(a) provisional approval of the proposal by the authority competent to do so and the publication of the same or giving notice to the owner of the land as well as the members of the public of the existence of the proposal

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41 Supra n. 37
(b) hearing of objections of the owners of the land to the proposal
(c) decision of the competent authority to acquire the land including the publication of the decision
(d) determination of the amount payable to the persons interested in the land
(e) procedure whereby persons interested can challenge the correctness of the award
(f) taking over possession of the land
(g) vesting of the land in the State; and
(h) ensuring that the land so acquired is used for the purpose for which it is acquired.

The land owner must be supplied or given access to all the necessary material on which he can formulate and urge his objections. But the Act does not provide a procedure whereby the owner can scrutinize the proposal for acquisition as he is not usually supplied with the details of the proposal and has no right to demand the same. He has no right to cross-examine the exponents of the proposal. It is also noteworthy that the officer holding the inquiry will not be a competent authority to decide. Hence his power should be limited only to make a report to the government.

The empirical study also reveals that the present norms formulated by the acquisition officers for classification of land are irrational and are not on the basis of established norms. Apropos the question: whether the classification of land for the purpose of fixing the market value on the basis of which award is given, is rational?, the data is analysed hereunder:

<table>
<thead>
<tr>
<th>Total No. of Respondents (Excluding Officials)</th>
<th>Yes</th>
<th>No</th>
<th>No Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>595</td>
<td>0</td>
<td>589</td>
<td>6</td>
</tr>
</tbody>
</table>
99% of the respondents raised their voice against the fixation of a higher rate for land adjacent to national highway and other major roads; and a paltry amount for the land adjacent to such lands.

It is also significant to note that many of the provisions of the Act amount to sheer violation of the natural right of audi alterem partem. The rules of natural justice require that no person shall be condemned unheard, and in the context of the right to object to a proposal of acquisition conferred under the law, it means that the person concerned must have an effective opportunity to be heard. In M/s Kamal Trading Pvt. Ltd. v. State of West Bengal43, the apex Court held that the decision taken by the Land Acquisition Officer without hearing objections properly under section 5 A (2) of the Act and rejected on a very vague ground could not be considered as acquisition for public purpose. Mere use of the words ‘for the great interest of the public’ does not lend the report the character of a report made after a proper application of the mind. Land Acquisition Officer is not expected to write a detailed report but, his report, however brief, should have reflected the application of the mind. Needless to say that as to which report made under section 5 A (2) could be said to be a report disclosing application of mind, will depend on the facts and circumstances of the case.

Bias in the nature of pecuniary and official is prevalent in almost all acquisitions for public purpose. The following data testifies the same. With respect to

43 AIR 2012 SC 829.
the question, Do you think that during the post-notification period, officials have adopted a 'pick and choose' policy? If so why?, the finding is tabulated below:

<table>
<thead>
<tr>
<th>Awareness of 'pick and choose' policy</th>
<th>Yes</th>
<th>No</th>
<th>No Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>391</td>
<td>26</td>
<td>8</td>
</tr>
<tr>
<td>Total Number of Respondents</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Displaced / Interested)</td>
<td>425</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Out of 425 respondents belonging to displaced/interested persons category, 92% complained of official bias in land acquisition procedures.

7.13 Lack of Proper Relief to Affected Persons

As seen earlier, the collector has to hear the persons interested in the land and make an award of the true area of the land, calculate the compensation to be paid for the land and the apportionment of the compensation between the persons known to be interested⁴⁴. While awarding compensation, he has to follow the provisions of Section 23 and 24 of the Act. The main defect in calculation of compensation is that the value of property at the time of the notification under section 4 and at the time of award is entirely different. In almost all acquisitions, the award will be given after long years of delay. So naturally the award given to the affected party will not be sufficient to

⁴⁴ See, Section 11, The Land Acquisition Act, 1894.
purchase another piece of land for his occupation and shelter. This leads to injustice to the land owner\textsuperscript{45}. The capacity and qualifications of the Collector to determine the quantum of compensation are also susceptible to various criticisms. In fact, the functions of the Collector are exercised by an officer of lower rank and he may not be an expert in valuation and is wholly unable to deal with the complex problems of valuation which frequently arise. Moreover, the same officer has been associated with the acquisition project from the start and because of that he may be interested in determining the amount as low as possible. To overcome such defects it is desirable that the persons determining the compensation should be competent and independent, and incorruptible, such as a civil court.

The right to compensation for the property acquired, especially agricultural lands is a fundamental right under Article 31-A of the Constitution. Hence, what is paid as compensation must be the full value of the property. The provisions of Articles 31-A supersede every provision of the Land Acquisition Act, and hence, the provisions in the Land Acquisition Act should be read and understood subject to the provisions of Articles 31-A which is a fundamental right as well as a human right. In \textit{State of West Bengal v Bella Banerjee}\textsuperscript{46}, the Supreme Court interpreted the word “compensation” as the full compensation that is the full market value of the property on the date of acquisition. The word compensation implies “full monetary value equivalent of the property”. In \textit{Dewan Singh v. Government of NCT of Delhi}\textsuperscript{47}, the Court observed that the claim of alternative land \textit{in lieu} of compensation is not a vested right of the person, whose land is acquired. It depends upon the language employed under any rule or scheme if framed by State Government.

Y.V Chandrachud C.J lamented\textsuperscript{48}: one of the reasons for the failure of agricultural reforms in India is that too frequent interference by development authorities who enjoy retention of control over details of farming, which destroys

\textsuperscript{46} AIR 1954 SC 170.
\textsuperscript{47} AIR 2011 Del. 76.
initiative and self reliance on the part of the farmers. Acquisition of land of small holders and poor peasants of India had great impact on their socio-economic rights. In India, about 86 percent of arable land is private and 89 percent rural households own some, even though most hold very small plots.\textsuperscript{49}

### 7.14 Acquisition of Property for Private Use

Many scholars argue that any legal system which protects the interest of individuals will not tolerate "private eminent domain."\textsuperscript{50} Acquisition of land can be divided into two on the basis of the use of the acquired land. The first category of acquisition is for a public purpose as mentioned in the Act, and the second is for the transfer of property for private use i.e. for the benefit of privately owned companies or association of people. Even though such takings are mediated by government action, the courts have no hesitation in pronouncing that "it has long been accepted that the sovereign may not take the property of one person for the sole purpose of transferring it to the benefit of another private person."\textsuperscript{51}

Eventually, many governmental takings today are functionally private takings. In government-mediated private takings, the government is formally responsible for taking property, but in fact it simply acts as a middleman who transfers the property from one set of private hands to another. Coercion is the preferred transfer mechanism in such type of acquisitions. Whenever a private property is acquired for the benefit of another private person, natural or legal, the Government should be accountable to the public and should make sure that the property is used for the benefit of the people. Acquisition must be justified for extreme public necessity. The theory of compensation for acquisition for private use must be applied differently. In addition to market value of the property, the persons interested in property may be provided with employment, shares in the company and pre-emption rights at the time of the winding up of the company.

\begin{itemize}
  \item\textsuperscript{49} Supra n.16.
  \item\textsuperscript{50} http://www.jstor.org/stable/27793389 (visited on August 15, 2012).
  \item\textsuperscript{51} Ibid.
\end{itemize}
7.15 Special Economic Zone: A Massive Encroachment to Individual Right

Liberalization and globalization in the world arena tempted India to liberalize its economic policy in 1991\(^\text{52}\). The government decided to set up special economic zones (SEZs) across India, where companies would get benefits that would attract investment, such as exemption from some of the restrictions on business that exist in the rest of the country. SEZ is a trade capacity development tool, with the goal to promote rapid economic growth by using tax and business incentives to attract foreign investment and technology.

Governments will acquire land for companies through eminent domain laws. However, declaration of large areas of land as special economic zones will drastically affect the interest of the poor peasants of the country in many ways: Firstly, many of them did not want to sell. Secondly, it was not even for a project of public use, like a road or a power project, which at least have a weak rationalization\(^\text{53}\). Thirdly, no just compensation, proper job assurance or rehabilitations policies for the deprived land owner.

So robbing tribes and other poor people from their basic source of living by the government in the name of development and the transfer of land owned by the poor farmers to corporate houses in the name of special economic zones may tend to uprooting them from their customary way of life and pursuing the culture of liberalization of criminalization\(^\text{54}\).

\(^{52}\) http://drt.co.in/2011/11/15/land-acquisition-for-sezs-are-the-%E2%80%9Cengines-for-growth%E2%80%9D-losing-its-steam/ (visited on April 17, 2012).


In *Bondu Ramaswamy v. Bangalore Development Authority*\(^ {55}\), the Supreme Court observed that if acquisition is for industrial or business houses (for setting-up industries or special economic zones etc.), the Government should play not only the role of a *land acquirer*, but also the role of the *protector* of the land-losers. As most of the agriculturists/small holders who lose their land do not have the expertise or the capacity for a negotiated settlement, the state should act a *benevolent trustee* and safeguard their interests. The Land Acquisition Collector should also become a Grievance Settlement Authority. The various alternatives: employment, equity participation, annuity benefits ensuring a regular income for life, rehabilitation in the form of housing or new businesses etc., should be considered and whichever is found feasible or suitable should be made an integral process of the scheme of such acquisitions. If the government or development authorities act merely as facilitators for industrial or business houses, mining companies and developers or colonisers, to acquire large extent of land ignoring the legitimate rights of land-owners, it leads to resistance, resentment and hostility towards acquisition process\(^ {56}\).

### 7.16 Imposition of Tax on Acquired Land

Another unnoticed area of violation of private right under the Land Acquisition Compensation award by the authority is the imposition of Tax on compensation received under the Act. What is received as compensation will not be sufficient even to meet the basic requirements of food and shelter. Hence, imposing tax on it will jeopardize the survival of displaced persons.

To the question: Do you think that the tax deduction on the compensation awarded by the Collector is justifiable?, the data is given below:

\(^{55}\) 2010 (5) SCJ 462.

\(^{56}\) *Ibid.* at 529.
99% of the respondents stated that the compensation award itself being a meagre amount, further deduction in the name of taxation is unsound.

From the above discussion it is very clear that persons who are thrown out of their home are dissatisfied with the provisions of Land Acquisition Act. Their interests are not at all protected under the Act. Though the Act provides unlimited power to the government for acquisition of land for public purpose, it is also the duty of the government to protect the basic rights of individuals such as the right to hold and enjoy property for their occupation and home stay.

Thus, the Act has failed to maintain a proper balance between public interest and private interest. Therefore, the only way to protect the private rights under Land Acquisition Act is to amend the provisions of the Land Acquisition Act in favour of the
owner of the property, whose fundamental rights as well as human rights are deprived of by such acquisition by the State without considering the natural rights of individuals and proper compensation. As said earlier, on 29 August 2013, Lok Sabha passed a new legislation and it was published in the Gazette of India Extra-ordinary on 26 September 2013. The Act is known as ‘The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013’. The new legislation intends to repeal the existing Land Acquisition Act, 1894. However, the new Act also remains controversial. Hence a detailed discussion on the Act has become inevitable; especially to ascertain whether the new legislation has maintained a proper equilibrium between public and private interests.

7.17 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 - A Critique

The new legislation is intended to ensure a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families. The legislation further intends to provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and to make adequate provisions for such affected persons for their rehabilitation and resettlement.

57 This view has been endorsed by the judiciary too. See for instance, Ramji Veerji Patel v. R.D.O, 2011 (4), KLT 152 (S.N).

58 The term ‘affected family’, includes: (i) a family whose land or other immovable property has been acquired; (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land; (iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 due to acquisition of land; (iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land; (v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition; (vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land; Section 3 (b), The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.
and to ensure that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status\(^{59}\).

### 7.17.1 Application of the Act

The provisions under the Act relating to land acquisition, compensation, rehabilitation and resettlement are applicable where the appropriate Government acquires land for its own use, hold and control, for Public Sector Undertakings and for public purpose, and shall include the following purposes:

(a) Strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people;

(b) Infrastructure projects\(^{60}\);

(c) Project for affected families;

(d) Housing schemes for such income groups as specified by the appropriate government;

(e) Project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) Project 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

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\(^{59}\) See the Object Clause of the Act, *Ibid*.

\(^{60}\) (i) All activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels; (ii) Projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute; (iii) Project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy; (iv) Project for water harvesting and water conservation structures, sanitation; (v) Project for Government administered, Government aided educational and research schemes or institutions; (vi) Project for sports, heath care, tourism, transportation of space programme; (vii) Any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament. See, Section 2 (1), *Ibid*. 

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reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

In addition to the purposes stated above, the provisions of the legislation relating to land acquisition, consent, compensation, rehabilitation and resettlement apply where the appropriate Government acquires land for the following purposes:

(a) Public private partnership projects, where the ownership of the land continues to vest with the government, for public purpose as defined above; and
(b) Private companies for public purpose.

The provisions relating to rehabilitation and resettlement shall apply in the cases where:

(a) A private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate Government, through private negotiations with the owner of the land
(b) A private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose.

7.17.2 Important Provisions of the New Act

7.17.2.1 Preliminary Investigation for Determination of Social Impact and Public Purpose.

Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal

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61 In the case of acquisition for private companies, the prior consent of at least eighty per cent of those affected families; and in the case of public private partnership projects, the prior consent of at least seventy per cent of those affected families, shall be obtained. The process of obtaining the consent shall be carried out along with the Social Impact Assessment study. Moreover, no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas. See, Section 2 (2), Ibid.

62 Section 2 (3), Ibid.
Corporation, as the case may be at the village level or the ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them\(^{63}\).

This provision prescribes only a formal consultation with the local authority. Members of local inhabitants, Non Governmental Organisations and the members of reserved category of the Local Self Government shall be included in the committee appointed for the Social Impact Assessment study.

The notification issued by the appropriate Government for the commencement of consultation and of the Social Impact Assessment study shall be made available in the local language to the Local Self Governments, as the case may be, and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil, and shall be published in the affected areas, and uploaded on the website of the appropriate Government\(^{64}\).

The Government shall ensure the completion of the Social Impact Assessment study\(^{65}\) within a period of six months from the date of its commencement; and the Social Impact Assessment study report shall be made available to the public\(^{66}\).

While undertaking a Social Impact Assessment study, the appropriate Government shall, amongst other things, take into consideration the impact that the project is likely to have on various aspects such as the livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair

\(^{63}\) Section 4 (1), \textit{Ibid.}

\(^{64}\) Section 4 (2), \textit{Ibid.}

\(^{65}\) The Social Impact Assessment study shall, inter-alia, include all the following, namely:

(a) assessment as to whether the proposed acquisition serves public purpose;
(b) estimation of affected families and the number of families among them likely to be displaced;
(c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
(d) whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project;
(e) whether land acquisition at an alternate place has been considered and found not feasible;
(f) study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project \textit{vis-a-vis} the benefits of the project. \textit{Ibid.}

\(^{66}\) See, Section 4 (3), \textit{Ibid.}
price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.67

7.17.2.2 Public Hearing for Social Impact Assessment

Whenever a Social Impact Assessment is required to be prepared, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.68 This is definitely a beneficial provision when compared to the Land Acquisition Act, 1894.

7.17.2.3 Publication of Social Impact Assessment Study

The appropriate Government shall ensure that the Social Impact Assessment study report and the Social Impact Management Plan are prepared and made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional magistrate and the Teshil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government. Wherever Environment Impact Assessment is carried out, a copy of the Social Impact Assessment report shall be made available to the Impact Assessment Agency authorised by the Central Government to carry out environmental impact assessment.69

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67 The appropriate Government shall also require the authority conducting the Social Impact Assessment study to prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for a specific component and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area. Ibid.
68 Section 5, Ibid.
69 Section 6, Ibid.
These provisions ensure transparency and minimise the pick and choose policy adopted hitherto under the Act of 1894.


The appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it\(^70\).

If the Expert Group feels that the project does not serve any public purpose; or the social costs and adverse social impacts of the project outweigh the potential benefits, it shall make a recommendation within two months from the date of its constitution to the effect that the project shall be abandoned forthwith and no further steps to acquire the land will be initiated in respect of the same\(^71\).

Similarly, if the Expert Group is of the opinion that the project will serve any public purpose and the potential benefits outweigh the social costs and adverse social impacts, it shall make specific recommendations within two months from the date of its constitution whether the extent of land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing options available\(^72\).

7.17.2.5 Examination of Proposals

The appropriate Government shall ensure that there is a legitimate and bona fide public purpose for the proposed acquisition which necessitates the acquisition of the land identified; the potential benefits and the public purpose shall outweigh the social costs and adverse social impact as only the minimum area of land required for

\(^70\) The Expert Group constituted shall include two non-official social scientists; two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be; two experts on rehabilitation; and a technical expert in the subject relating to the project. Section 7, Ibid.

\(^71\) Section 7 (4), Ibid.

\(^72\) Section 7 (5), Ibid.
the project is proposed to be acquired; there is no unutilized land which has been previously acquired in the area and the land, if any, acquired earlier remained unutilized, is used for such public purpose\textsuperscript{73}.

The appropriate Government shall examine the report of the Collector if any and the report of the Expert Group on the Social Impact Assessment study and after considering all the reports, recommend such area for acquisition which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected. These provisions are intended to minimise arbitrary exercise of powers. The involvement of the experts in the process is also a positive step.

However, where land is proposed to be acquired invoking the ‘urgency provisions’, the appropriate Government has been empowered to exempt undertaking of the Social Impact Assessment study. As seen earlier, urgency is a matter of subjective satisfaction, and it is not open to court to examine the propriety or correctness of the satisfaction. Hence, it leaves room for arbitrariness\textsuperscript{74}.

\textbf{7.17.3 Special Provision to Safeguard Food Security.}

Irrigated multi-cropped land can be acquired subject to the condition that it is being done under exceptional circumstances, as a demonstrable last resort. Moreover, whenever such land is acquired, an equivalent area of cultivatable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture to enhance food-security. In other cases, the acquisition of the agriculture land\textsuperscript{75} in aggregate for all projects in a district or State, shall in no case exceed such limits of the total net sown area of that district or State, as may be notified by the appropriate Government.

\textsuperscript{73} Section 8, \textit{Ibid}.

\textsuperscript{74} For a discussion, See \textit{Supra} Chapter VI, pp.117-124.

\textsuperscript{75} “Agricultural land” means land used for the purpose of (i) agriculture or horticulture; (ii) dairy farming, poultry farming, pisciculture, sericulture, seed farming breeding of livestock or nursery growing medicinal herbs; (iii) raising of crops, trees, grass or garden produce; and (iv) land used for the grazing of cattle. Section 3 (d), \textit{Supra} n.58
However, this provision shall not be applicable in the case of projects that are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like. Moreover, this provision is applicable only in the case of acquisition of multi-cropped agricultural land. Other agricultural lands are not covered under the provision. Consequently, the benefit is available only to a limited number of persons in the same locality. Hence, the provision is discriminatory.

### 7.17.4 Notification and Acquisition

Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas shall be published.

Immediately after issuance of the notification, the concerned Gram Sabha or Sabhas at the village level, municipalities in the case of municipal areas and the Autonomous Councils in the case of the areas referred to in Indian Constitution, shall be informed of the contents of the notification at a meeting convened for that purpose.

The notification shall also contain a statement of the nature of the public purpose involved, reasons necessitating the displacement of affected persons, a summary of the Social Impact Assessment Report and the particulars of the Administrator appointed for the purposes of rehabilitation and resettlement.

Once the notification is published, a person shall not make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land. However, the Collector may, on the application made

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76 Section 10, Ibid.
77 See, Sixth Schedule, Constitution of India.
by the owner of the land so notified, exempt, in special circumstances to be recorded in writing, such an owner from the operation of this provision. The Collector is not bound to compensate any loss or injury suffered by any person due to his willful violation of the above said provision.

After issuance of notice, the Collector shall undertake and complete the exercise of updating of land records as prescribed within a period of two months\(^\text{78}\).

### 7.17.5 Preliminary Survey of Land

For the purposes of enabling the appropriate Government to determine the extent of land to be acquired, it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen;

\(a\) To enter upon and survey and take levels of any land in such locality;

\(b\) To dig or bore into the sub-soil;

\(c\) To do all other acts necessary to ascertain whether the land is adapted for such purpose;

\(d\) To set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; and

\(e\) To mark such levels, boundaries and line by placing marks and cutting trenches and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

The officer authorized by the Government has no power to enter into the property and to conduct survey except in the presence of the owner of the land or in the absence of any person authorised in writing by the owner. The above provision is

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\(^{78}\) Section 11(5), Supra n. 58.
not applicable if reasonable opportunity is being given to the owner to appear during the time of survey\textsuperscript{79}.

\textbf{7.17.5.1 Payment for Damage during Preliminary Survey}

The officer conducting the survey shall, at the time of entry, pay or tender payment for any damage caused, and, in a case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute, to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final\textsuperscript{80}.

\textbf{7.17.6 Lapse of Social Impact Assessment Report}

Where a preliminary notification is not issued within twelve months from the date of appraisal of the Social Impact Assessment report submitted by the Expert Group then, such report shall be deemed to have lapsed and a fresh Social Impact Assessment shall be required to be undertaken prior to acquisition proceedings\textsuperscript{81}. But the appropriate Government can extend the said period of twelve months, if in its opinion, circumstances exist justifying the same.

\textbf{7.17.7 Hearing of Objection}

Any person interested in any land which has been notified as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, object to \((a)\) the area and suitability of land proposed to be acquired; \((b)\) justification offered for public purpose or \((c)\) the findings of the Social Impact Assessment report. Such objection shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he

\textsuperscript{79} Section 12, Ibid.
\textsuperscript{80} Section 13, Ibid.
\textsuperscript{81} Section 14, Ibid.
thinks necessary, either make a report in respect of the land which has been notified or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition\(^{82}\), particulars as to the number of affected families likely to be resettled, for the decision of that Government\(^{83}\). The decision of the appropriate Government made on the objections shall be final\(^{84}\).

### 7.17.8 Preparation of Rehabilitation and Resettlement Scheme

Upon the publication of the preliminary notification, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families, in such manner and within such time as may be prescribed, which shall include:

(a) Particulars of lands and immovable properties being acquired of each affected family;

(b) Livelihoods lost in respect of land losers and landless whose livelihoods are primarily dependent on the lands being acquired;

(c) A list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved;

(d) Details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved; and

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\(^{82}\) The term “cost of acquisition” includes: (i) amount of compensation which includes solatium, any enhanced compensation ordered by the Land Acquisition and Rehabilitation and Resettlement Authority or the Court and interest payable thereon and any other amount determined as payable to the affected families by such Authority or Court; (ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition; (iii) cost of acquisition of land and building for settlement of displaced or adversely affected families; (iv) cost of development of infrastructure and amenities at the resettlement areas; (v) cost of rehabilitation and resettlement as determined in accordance with the provisions of this Act; (vi) administrative cost includes, (a) for acquisition of land, including both in the project site and out of project area lands, not exceeding such percentage of the cost of compensation as may be specified by the appropriate Government; (b) for rehabilitation and resettlement of the owners of the land and other affected families whose land has been acquired or proposed to be acquired or other families affected by such acquisition; (vii) cost of undertaking “Social Impact Assessment study”; Section 3 (i), \textit{Ibid.}

\(^{83}\) Section 15 (2), \textit{Ibid.}

\(^{84}\) Section 15 (3), \textit{Ibid.}
(e) Details of any common property resources being acquired.

The Administrator shall, based on the survey and census, prepare a draft Rehabilitation and Resettlement Scheme, as prescribed which shall include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved—

(i) A list of Government buildings to be provided in the Resettlement area;
(ii) Details of the public amenities and infrastructural facilities which are to be provided in the resettlement area.

The draft Rehabilitation and Resettlement scheme shall include the time limit for implementing Rehabilitation and Resettlement Scheme, and the draft scheme shall be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities. A public hearing shall also be conducted. The Administrator shall, on completion of public hearing submit the draft Scheme for Rehabilitation and Resettlement along with a specific report on the claims and objections raised in the public hearing to the Collector.85

7.17.9 Review of Rehabilitation and Resettlement

The Collector shall review the draft Scheme submitted by the Administrator with the Rehabilitation and Resettlement Committee at the Project level. He shall submit the draft Rehabilitation and Resettlement Scheme with his suggestions to the Commissioner Rehabilitation and Resettlement for approval of the Scheme.86

85 Section 16, Ibid.
86 Section 17, Ibid.
7.17.10 Publication of Rehabilitation and Resettlement Scheme

The Commissioner shall cause the approved Rehabilitation and Resettlement Scheme to be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, and uploaded on the website of the appropriate Government.\(^{87}\)

Similarly, where the appropriate Government is certain that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the “resettlement area” for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorised to certify its orders.

The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with draft declaration. Such a declaration shall not be made unless the Requiring Body deposits an amount, in full or part, as may be prescribed by the appropriate Government toward the cost of acquisition of the land. The Requiring Body shall deposit the amount promptly so as to enable the appropriate Government to publish the declaration within a period of twelve months from the date of the publication of preliminary notification. In projects where land is acquired in stages, the application for acquisition itself can specify different stages for the rehabilitation and resettlement, and all declarations shall be made according to the stages so specified.\(^{88}\)

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\(^{87}\) Section 18, *Ibid.*

The declaration\textsuperscript{89} shall be conclusive evidence that the land is required for a public purpose and, after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.

Where no declaration is made within twelve months from the date of preliminary notification, then such notification shall be deemed to have been rescinded\textsuperscript{90}. However, the appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same; provided that such decision shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

The Collector shall thereupon cause the land, unless it has been already marked out to be marked out and measured, and if no plan has been made thereof, a plan to be made of the same\textsuperscript{91}.

7.17.11 Notice to Persons Interested

The Collector shall publish the public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him\textsuperscript{92}.

Such public notice shall state the particulars of the land so needed, and require all persons interested in the land to appear personally or by agent or advocate before the Collector at a time and place mentioned in the public notice not being less than thirty days and not more than six months after the date of publication of the notice,

\textsuperscript{89} Every declaration shall indicate; (a) the district or other territorial division in which the land is situated; (b) the purpose for which it is needed, its approximate area; and (c) where a plan shall have been made for the land, the place at which such plan may be inspected without any cost, Ibid.

\textsuperscript{90} In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded, Ibid.

\textsuperscript{91} Section 20, Ibid.

\textsuperscript{92} Section 21 (1), Ibid.
and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements.\(^{93}\)

The Collector may in any case require such a statement to be made in writing and signed by the party or his agent.\(^{94}\) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, be entitled to act for persons so interested, as a resident or have agents authorised to receive service on their behalf, within the revenue district in which the land is situated.\(^{95}\)

The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being less than thirty days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement.\(^{96}\)

### 7.17.12 Enquiry and Award by Collector

On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections which any person interested has stated in pursuance of a notice given, to the measurements, into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand about (a) the true area of the land;

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\(^{93}\) Section 21 (2), \textit{Ibid.}

\(^{94}\) Section 21 (3), \textit{Ibid.}

\(^{95}\) Section 21 (5): In case any person so interested resides elsewhere, and has no such agent, the Collector shall ensure that the notice shall be sent to him by post in letter addressed to him at his last known residence, address of place or business and also publish the same in at least two national daily newspapers and also on his website.\textit{Ibid.}

\(^{96}\) Section 22, \textit{Ibid.}
(b) the compensation as determined along with Rehabilitation and Resettlement award and which in his opinion should be allowed for the land; and (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him\textsuperscript{97}.

7.17.13 Application of Land Acquisition Act 1894 in Certain Cases

In any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894:- (a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation, rehabilitation and resettlement shall apply; or (b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

In case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act. However, where an award has been made and compensation in respect of a majority of land holdings has not been accepted, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act\textsuperscript{98}.

\textsuperscript{97} Section 23, Ibid.  
\textsuperscript{98} Section 24, Ibid.
7.17.14  Time Limit for Award

The Collector shall make an award within a period of twelve months from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. However, the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same99.

7.17.15  Determination of Market Value: Factors to be Considered

The Collector shall adopt the following criteria in assessing and determining the market value of the land:

(a) the market value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or the nearest vicinity; or

(c) consented amount of compensation as agreed upon in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher100.

The date for determination of market value shall be the date on which the notification has been issued. The ‘average sale price’ shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or the near vicinity during immediately preceding three years of the year in which such acquisition of land is proposed to be made. For determining the ‘average sale price’ one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

99  Section 25, Ibid.
100  Section 26 (1), Ibid.
While determining the market value and the average sale price, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

While determining the market value and the average sale price, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value. The market value calculated shall be multiplied by a factor to be specified in the First Schedule.

Where the market value cannot be determined for the reason that:— (a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or (b) the registered sale deeds or agreements to sell for similar land are not available for the immediately preceding three years; or (c) the market value has not been specified under the Indian Stamp Act, 1899 by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in respect of similar types of land situated in the immediate adjoining areas.

Where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares, on no account, shall exceed twenty-five per cent of the value so calculated as the case may be. Similarly, the Requiring Body shall not compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated. Moreover, the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area, and the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a

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101 See, Explanations 1 to 4 to Section 26 (1), Ibid.
102 See Appendix – I, infra, pp. 257-258.
103 Section 26 (3), Supra n. 58.
religion or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice\textsuperscript{104}.

### 7.17.16 Parameters to be Considered in the Determination of Amount of Compensation

The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the landowner (whose land has been acquired) by including all assets attached to the land\textsuperscript{105}.

In determining the amount of compensation to be awarded for land acquired, the Collector shall take into consideration\textsuperscript{106}:

\begin{itemize}
  \item[a.] the market value and the award amount in accordance with the First and Second Schedules\textsuperscript{107},
  \item[b.] the damage sustained by the person interested\textsuperscript{108}, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;
  \item[c.] the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
  \item[d.] the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition
\end{itemize}

\textsuperscript{104} Ibid.
\textsuperscript{105} Section 27, Ibid.
\textsuperscript{106} Section 28, Ibid.
\textsuperscript{107} See, Appendices I and II, infra, pp. 257-264.
\textsuperscript{108} “Person interested” means; (i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; (ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; (iii) a person interested in an easement affecting the land; (iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and (v) any person whose primary source of livelihood is likely to be adversely affected. Section 3 (x), Supra n.58.
injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
e. in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;
f. the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 20 and the time of the Collector's taking possession of the land; and
g. any other ground which may be in the interest of equity, justice and beneficial to the affected families.

7.17.17 Determination of Value of Things Attached to Land or Building

In determining the market value of the building and other immovable property or assets attached to the land or buildings which are to be acquired, the Collector may use the services of a competent engineer or any other specialist in the relevant field. For determining the value of trees and plants attached to the land acquired, the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, may be used. For the purpose of assessing the value of the standing crops damaged during the process of land acquisition, he may use the services of experienced persons in the field of agriculture\textsuperscript{109}.

7.17.18 Award of Solatium

Having determined the total compensation to be paid, the Collector shall, to arrive at the final award, impose a “solatium” amount equivalent to one hundred per cent of the compensation amount. Such solatium amount shall be in addition to the compensation payable to any person whose land has been acquired\textsuperscript{110}.

\textsuperscript{109} Section 29, \textit{Ibid.}
\textsuperscript{110} Section 30, \textit{Ibid.}
The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule\textsuperscript{111}.

In addition to the market value of the land, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier\textsuperscript{112}.

\textbf{7.17.19 Rehabilitation and Resettlement Award}

The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule\textsuperscript{113}. The Rehabilitation and Resettlement Award shall include all of the following, namely:

\begin{itemize}
\item[(a)] Rehabilitation and resettlement amount payable to the family\textsuperscript{114};
\item[(b)] Bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred;
\item[(c)] Particulars of the house site and the house to be allotted, in case of displaced families\textsuperscript{115};
\item[(d)] Particulars of land allotted to the displaced families;
\item[(e)] Particulars of one time subsistence allowance and transportation allowance in case of displaced families;
\item[(f)] Particulars of payment for cattle shed and petty shops;
\end{itemize}

\textsuperscript{111} \textit{Supra} n.102.
\textsuperscript{112} Section 30 (3), \textit{Supra} n. 58.
\textsuperscript{113} See Appendix II, \textit{infra}, pp.259-264.
\textsuperscript{114} The term “family” includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him. Widows, divorcees and women deserted by families shall be considered separate families; and an adult of either gender with or without spouse or children or dependents shall be considered as a separate family. Section 3 (m), \textit{Supra} n.58.
\textsuperscript{115} “Displaced family” means any family, who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement area; Section 3 (k), \textit{Ibid.}
(g) Particulars of one-time amount to artisans and small traders;

(h) Details of mandatory employment to be provided to the members of the affected families;

(i) Particulars of any fishing rights that may be involved;

(j) Particulars of annuity and other entitlements to be provided;

(k) Particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided.\(^{116}\)

7.17.20 Infrastructural Amenities in Resettlement Area

In every resettlement area\(^ {117}\), the Collector shall ensure the provision of all infrastructural facilities and basic minimum amenities specified in the Third Schedule.\(^ {118}\)

7.17.21 Corrections to Awards passed by the Collector

The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of this Act to make a reference to the Authority, before the making of such reference, by order, correct any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority. No correction which is likely to badly affect any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter.

The Collector shall give immediate notice of any correction made in the award so corrected to all the persons interested. Where any excess amount is proved to have been paid to any person as a result of the correction, the excess amount so paid shall

\(^{116}\) Section 31, “The appropriate Government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index”. \textit{Ibid}.

\(^{117}\) “Resettlement Area” means an area where the affected families who have been displaced as a result of land acquisition are resettled by the appropriate Government, Section 3 (z c), \textit{Ibid}.

\(^{118}\) Section 32, See also Appendix III, \textit{infra}, pp. 265-266.
be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered, as prescribed by the appropriate Government\textsuperscript{119}.

7.17.22 Power to Call for Records

The appropriate Government may at any time before the award is made by the Collector call for any record of any proceedings (whether by way of inquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit. The appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard\textsuperscript{120}.

7.17.23 Finality of the Awards of the Collector

The awards shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and market value of the land and the assets attached thereto, solatium so determined and the apportionment of the compensation among the persons interested.

The Collector shall give immediate notice of his awards to such persons interested who are not present personally or through their representatives when the awards are made. The Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the

\textsuperscript{119} Section 33, \textit{Ibid.}

\textsuperscript{120} Section 36, \textit{Ibid.}
amount of compensation awarded to each individual along with details of the land finally acquired under this Act on the website created for this purpose\textsuperscript{121}.

7.17.24 Power to take Possession of Land Acquired

The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule\textsuperscript{122} commencing from the date of the award\textsuperscript{123}.

The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

7.17.25 Additional Compensation in Multiple Displacements

As far as possible, the Collector shall not displace any family which has already been displaced by the appropriate Government for the purpose of acquisition under the provisions of this Act, and if so, displaced, shall pay an additional compensation equivalent to that of the compensation determined under this Act for the second or successive displacements\textsuperscript{124}.

\begin{footnotes}
\item[121] Section 37, \textit{Ibid.}
\item[122] \textit{Supra} n.113.
\item[123] Section 38: The components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award. In case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired. \textit{Supra} n.58.
\item[124] Section 39, \textit{Ibid.}
\end{footnotes}
7.17.26 Special powers at the time of Urgency

In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiry of thirty days from the publication of the notice, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. However, the exercise of such powers shall be subjected to the following conditions:

(i) the powers of the appropriate Government shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament.

(ii) the Collector shall take possession of any building or part of a building only after giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(iii) before taking possession of any land, the Collector shall tender payment of eighty per cent of the compensation for such land as estimated by him to the person interested entitled thereto.

(iv) an additional compensation of seventy-five per cent of the total compensation shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated\(^\text{125}\).

7.17.27 Special Provisions for Scheduled Castes and Scheduled Tribes

As far as possible, no acquisition of land shall be made in the Scheduled Areas. Where such acquisition does take place it shall be done only as a demonstrable

\(^{125}\) Section 40 (5): “No additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interests of the State or relations with foreign States”. Ibid.
last resort. In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before the issue of a notification under this Act, or any other Central Act or a State Act for the time being in force: Where the Gram Sabha does not exist or has not been constituted, the consent of the Panchayats or the Autonomous Districts Councils shall be obtained.

In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition.

The Development Plan shall also contain a programme for the development of alternate fuel, fodder and, non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.

In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first instalment and the rest shall be paid after taking over of the possession of the land.

The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.
The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.

Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void, and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes\textsuperscript{126}.

The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects\textsuperscript{127}.

Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they shall be paid an additional twenty-five per cent, rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees\textsuperscript{128}.

All benefits, including the reservation benefits available to the Scheduled Tribes and the Scheduled Castes in the affected areas shall continue in the resettlement area\textsuperscript{129}.

Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the same shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights.

\textsuperscript{126} Section 41 (1) to (9), Ibid.
\textsuperscript{127} Section 41 (10), Ibid.
\textsuperscript{128} Section 41 (11), Ibid.
\textsuperscript{129} Section 42, Ibid.
7.17.28 Enforcement Machinery and the Procedure for Rehabilitation and Resettlement

7.17.28.1 The Administrator for Rehabilitation and Resettlement

Where the appropriate Government is satisfied that there is likely to be involuntary displacement of persons due to acquisition of land, then, the State Government shall, by notification, appoint in respect of that project, an officer not below the rank of Joint Collector or Additional Collector or Deputy Collector or equivalent official of Revenue Department to be the Administrator for Rehabilitation and Resettlement. Subject to the superintendence, directions and control of the appropriate Government and the Commissioner for Rehabilitation and Resettlement, the formulation, execution and monitoring of the Rehabilitation and Resettlement Scheme shall vest in the Administrator.

7.17.28.2 The Commissioner for Rehabilitation and Re-settlement

The State Government shall appoint an officer of the rank of Commissioner or Secretary of that Government for rehabilitation and resettlement of affected families, to be called the Commissioner for Rehabilitation and Resettlement. The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and proper implementation of such schemes or plans. The Commissioner shall be responsible for the post-implementation social audit in consultation with the Gram Sabha in rural areas and municipality in urban areas.

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130 Section 43 (1), Ibid.
131 Section 43 (3), Ibid.
132 Section 44, Ibid.
7.17.28.3 The Rehabilitation and Re-settlement Committee

Where land proposed to be acquired is equal to or more than one hundred acres, the appropriate Government shall constitute a Committee under the chairmanship of the Collector to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of the Rehabilitation and Resettlement scheme and to carry out post-implementation social audits in consultation with the Gram Sabha in rural areas and municipality in urban areas.\(^{133}\)

The Rehabilitation and Resettlement Committee shall include, apart from officers of the appropriate Government, the following members, namely:

\(\text{(a)}\) A representative of women residing in the affected area;

\(\text{(b)}\) A representative each of the Scheduled Castes and the Scheduled Tribes residing in the affected area;

\(\text{(c)}\) A representative of a voluntary organisation working in the area;

\(\text{(d)}\) A representative of a nationalised bank;

\(\text{(e)}\) The Land Acquisition Officer of the project;

\(\text{(f)}\) The Chairpersons of the panchayats or municipalities located in the affected area or their nominees;

\(\text{(g)}\) The Chairperson of the District Planning Committee or his nominee;

\(\text{(h)}\) The Member of Parliament and Member of the Legislative Assembly of the concerned area or their nominees;

\(\text{(i)}\) A representative of the Requiring Body; and

\(\text{(j)}\) Administrator for Rehabilitation and Resettlement as the Member-Convenor.

Where any person other than a specified person is purchasing land through private negotiations for an area equal to or more than such limits, as may be notified by the appropriate Government, considering the relevant State specific factors and

\(^{133}\) Section 45 (1), \textit{Ibid.}

\(^{134}\) Section 45 (2), \textit{Ibid.}
circumstances, for which the payment of Rehabilitation and Resettlement Costs under this Act is required, he shall file an application with the District Collector notifying him of: (a) intent to purchase; (b) purpose for which such purchase is being made; (c) particulars of lands to be purchased\textsuperscript{135}.

It shall be the duty of the Collector to refer the matter to the Commissioner for the satisfaction of all relevant provisions under this Act related to rehabilitation and resettlement. Based upon the Rehabilitation and Resettlement Scheme approved by the Commissioner as per the provisions of this Act, the Collector shall pass individual awards covering Rehabilitation and Resettlement entitlements as per the provisions of the Act.

No land use change shall be permitted if rehabilitation and resettlement is not complied with in full\textsuperscript{136}; and any purchase of land by a person other than specified persons without complying with the provisions of Rehabilitation and Resettlement Scheme shall be void \textit{ab initio}\textsuperscript{137}.

If any land has been purchased through private negotiations by a person on or after the 5th day of September, 2011, and, if the same land is acquired within three years from the date of commencement of this Act, then, forty per cent of the compensation paid for such land acquired shall be shared with the original land owners\textsuperscript{138}.

Where the Collector is of the view that the obligations of the Requiring Body with regard to rehabilitation and resettlement can be quantified into monetary amount,

\begin{flushright}
\textsuperscript{135} Section 46 (1), Ibid.
\textsuperscript{136} Section 46 (4), Ibid.
\textsuperscript{137} Section 46 (5), Ibid.
\textsuperscript{138} Section 46 (6) : “Land owner” includes any person: (i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or (ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or under any other law for the time being in force; or (iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or (iv) any person who has been declared as such by an order of the court or Authority. Section 3 (r), Ibid.
\end{flushright}
he shall allow the payment of such amount into an account in complete satisfaction of such obligations, which shall be administered by the Administrator under the supervision of the Collector\textsuperscript{139}.

7.17.28.4 The National Monitoring Committee

The Central Government may, whenever necessary, for national or inter-State projects, constitute a National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act. The Committee may, besides having representation of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields\textsuperscript{140}.

The States and Union territories shall provide all the relevant information on the matters covered under this Act, to the National Monitoring Committee in a regular and timely manner, and also as and when required\textsuperscript{141}.

7.17.28.5 The State level Monitoring Committee

The State Government shall constitute a State Monitoring Committee for reviewing and monitoring the implementation or rehabilitation and resettlement schemes or plans under this Act. The Committee may, besides having representatives of the concerned Ministries and Departments of the State Government, associate with it eminent experts from the relevant fields\textsuperscript{142}.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{139} Section 47, \textit{Ibid.}
\item \textsuperscript{140} Section 48, \textit{Ibid.}
\item \textsuperscript{141} Section 49, \textit{Ibid.}
\item \textsuperscript{142} Section 50, \textit{Ibid.}
\end{itemize}
\end{footnotesize}
The Land Acquisition, Rehabilitation and Resettlement Authority

The appropriate Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish, by notification, one or more Authorities to be known as “the Land Acquisition, Rehabilitation and Resettlement Authority” to exercise jurisdiction, powers and authority conferred on it by or under the Act\textsuperscript{143}. The Authority shall consist of one person only ‘the Presiding Officer’ to be appointed, by notification, by the appropriate Government\textsuperscript{144}.

A person shall not be qualified for appointment as the Presiding Officer of an Authority unless: (a) he is or has been a District Judge; or (b) he is a qualified legal practitioner for not less than seven years.

A Presiding Officer shall be appointed by the appropriate Government in consultation with the Chief Justice of a High Court in whose jurisdiction the Authority is proposed to be established\textsuperscript{145}. The Presiding Officer of an Authority shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier\textsuperscript{146}.

Jurisdiction of the Civil Courts Barred

No civil court (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter\textsuperscript{147}.

\textsuperscript{143} Section 51 (1), \textit{Ibid.}
\textsuperscript{144} Section 52, \textit{Ibid.}
\textsuperscript{145} Section 53, \textit{Ibid.}
\textsuperscript{146} Section 54, \textit{Ibid.}
\textsuperscript{147} Section 63, \textit{Ibid.}
7.17.30 Reference by the Collector

Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, to the person to whom it is payable, the rights of rehabilitation and resettlement or the apportionment of the compensation among the persons interested. The Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority\textsuperscript{148}.

7.17.31 Statement of the Collector

In making the reference, the Collector shall state for the information of the Authority, in writing under his hand:

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think are interested in such land;

(c) the amount awarded for damages and paid or tendered and the amount of compensation awarded under the provisions of this Act;

(d) the amount paid or deposited under any other provisions of this Act; and

(e) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined\textsuperscript{149}.

The Authority shall thereupon cause a notice specifying the day on which the Authority will proceed to determine the objection, and directing their appearance before the Authority on that day, to be served on the following persons, namely: (a) the applicant; (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded;

\textsuperscript{148} Section 64, Ibid.
\textsuperscript{149} Section 65, Ibid.
and (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector\textsuperscript{150}.

Every such proceeding shall take place in public, and all persons entitled to practice in any Civil Court in the State shall be entitled to appear, plead and act (as the case may be) in such proceeding\textsuperscript{151}.

7.17.32 Determination of Award by the Authority

In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under the Act\textsuperscript{152}.

In addition to the market value of the land, the Authority shall in every case award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the preliminary notification in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier\textsuperscript{153}.

In addition to the market value of the land the Authority shall in every case award a solatium of one hundred per cent over the total compensation amount\textsuperscript{154}.

If the sum, which in the opinion of the Authority concerned, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Authority concerned may direct the Collector to pay interest on such excess at the rate of nine per cent per annum from

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{150} Section 66, Ibid.
\item \textsuperscript{151} Section 68, Ibid.
\item \textsuperscript{152} Section 69 (1), Ibid.
\item \textsuperscript{153} Section 69 (2), Ibid.
\item \textsuperscript{154} Section 69 (3), Ibid.
\end{itemize}
\end{footnotesize}
the date on which he took possession of the land to the date of payment of such excess into Authority. The award of the Authority concerned may also direct that where such excess or any part thereof is paid to the Authority after the date or expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Authority before the date of such expiry155.

7.17.33 Appeal to the High Court

The Requiring Body or any person aggrieved by the award passed by an Authority may file an appeal to the High Court within sixty days from the date of award. The High Court may, if it is convinced that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. Every appeal shall be heard as expeditiously as possible and endeavour shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court156.

7.17.34 Payment of Interest

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of so taking possession until it shall have been so paid or deposited. If such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum shall be payable from the date or expiry of the said period of one year on the amount of

155 Section 72, Ibid.
156 Section 74, Ibid.
compensation or part thereof which has not been paid or deposited before the date of such expiry.\textsuperscript{157}

\textbf{7.17.35 Temporary Occupation of Land}

Whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from the commencement of such occupation.\textsuperscript{158}

The Collector shall thereupon give notice, in writing to the person interested in such land, of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken there from, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.\textsuperscript{159}

In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Authority.\textsuperscript{160}

On payment of such compensation, or on executing such agreement, or on making a reference, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.\textsuperscript{161}

On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein. If the

\textsuperscript{157} Section 80, \textit{Ibid.}
\textsuperscript{158} Section 81 (1), \textit{Ibid.}
\textsuperscript{159} Section 81 (2), \textit{Ibid.}
\textsuperscript{160} Section 81 (3), \textit{Ibid.}
\textsuperscript{161} Section 82 (1) \textit{Ibid.}
land has become permanently unfit for use for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose\textsuperscript{162}.

In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Authority concerned\textsuperscript{163}.

7.17.36 Forceful Surrender of Land

If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the surrender of the land to the Collector\textsuperscript{164}.

7.17.37 Exemption from Income Tax Stamp Duty and Fees

No income tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 47 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same\textsuperscript{165}.

7.17.38 Change of the Purpose of Acquisition

No change from the purpose or related purposes for which the land is originally sought to be acquired shall be allowed. However, if the land acquired is rendered unusable for the purpose for which it was acquired due to a fundamental

\textsuperscript{162} Section 82 (2), \textit{Ibid.}
\textsuperscript{163} Section 83, \textit{Ibid.}
\textsuperscript{164} Section 91, \textit{Ibid.}
\textsuperscript{165} Section 96, \textit{Ibid.}
change because of any unforeseen circumstances, then the appropriate Government may use such land for any other public purpose\textsuperscript{166}.

### 7.17.39 Return of the Unutilised Land

When any land, acquired remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government\textsuperscript{167}.

### 7.17.40 Legislative Power of the State Governments

Nothing in the Act prevents any State from enacting any law to enhance or add to the entitlements enumerated under the Act which confers higher compensation than payable under the Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act\textsuperscript{168}.

### 7.17.41 Options to the Affected Families

Where a State law or a policy framed by the Government of a State provides for a higher compensation than that calculated under this Act for the acquisition of land, the affected persons or his family or member of his family may at their option opt to avail of such higher compensation and rehabilitation and resettlement under such State law or such policy of the State.

Where a State law or a policy framed by the Government of a State offers more beneficial rehabilitation and resettlement provisions under that Act or policy

\textsuperscript{166} Section 99, \textit{Ibid.}

\textsuperscript{167} Section 101. "Land Bank" means a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-deliquent properties into productive use. See, Explanation to Section 102. \textit{Ibid.}

\textsuperscript{168} Section 107, \textit{Ibid.}
than under this Act, the affected persons or his family or member of his family may at his option opt to avail such rehabilitation and resettlement provisions under such State law or such policy of the State instead of under the Act\textsuperscript{169}.

For a critical appraisal of the new legislation, a comparative analysis of Land Acquisition Act, 1894 and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is felt necessary:

### 7.18 A Comparative Study of Two Legislations

<table>
<thead>
<tr>
<th>A Comparative Analysis</th>
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<tbody>
<tr>
<td><strong>Act of 1894</strong></td>
<td><strong>Act of 2013</strong></td>
</tr>
<tr>
<td>A colonial legislation giving emphasis only on compulsory acquisition of property for public purpose.</td>
<td>A modern legislation focusing on fair compensation and transparency in land acquisition, rehabilitation and resettlement.</td>
</tr>
<tr>
<td>Proposal for acquisition and publication are prerogative of government officials.</td>
<td>In addition to Government officials, local bodies, expert groups etc. are actively involved.</td>
</tr>
<tr>
<td>Provisions for impact study totally absent.</td>
<td>Examination of <em>bonafideness</em> of public purpose, potential benefits etc. are verified at various stages of acquisition.</td>
</tr>
<tr>
<td>No specific provision for the acquisition of agricultural land.</td>
<td>There are specific provisions for the acquisition of agricultural land for ensuring food security.</td>
</tr>
</tbody>
</table>

\textsuperscript{169} Section 108 (1) and (2), *Ibid.*
<table>
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<tr>
<th>Right to know ensured only to a limited extent.</th>
<th>Wide publicity in the form of notification through official Gazette, two daily newspapers (one in local language) and web sites are mandatory.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act is silent about rehabilitation and resettlement measures.</td>
<td>Such measures are given due weightage; and for that purpose there is a provision for the appointment of an Administrator.</td>
</tr>
<tr>
<td>Objections from interested persons before final declaration remain a mere formality.</td>
<td>Interested persons are entitled to raise objections with respect to land acquisition, the extent of land, various schemes for rehabilitation and resettlement etc.</td>
</tr>
<tr>
<td>Award shall be passed within a period of two years from the date of publication of final declaration.</td>
<td>Award shall be passed within one year from date of publication of declaration.</td>
</tr>
<tr>
<td>While determining the compensation for acquisition, discretion is fettered by the limited factors specified in the Act.</td>
<td>In addition to the factors specified in the Act, the authority shall consider the provisions of Stamp Act 1899, the average sale price, or the consented amount (in the case of acquisition by private companies by agreement) whichever is higher.</td>
</tr>
<tr>
<td>Only 30 per cent of the market value of the property is provided as solatium.</td>
<td>One hundred per cent of compensation amount as solatium.</td>
</tr>
<tr>
<td>No provision for rehabilitation and resettlement schemes.</td>
<td>Detailed provisions for rehabilitation and resettlement.</td>
</tr>
</tbody>
</table>
The Act totally ignored the interest of persons who are affected by multiple displacements.

Right to additional compensation in multiple displacements recognised.

No special provision for Scheduled Castes and Scheduled Tribes.

If the project involves involuntary displacement of Scheduled Castes and Scheduled Tribes, a development plan shall be prepared for securing their rights.

No separate authority for monitoring the land acquisition, rehabilitation and resettlement.

Constitution of National Monitoring Committee, State Monitoring Committees for reviewing and monitoring the implementation of rehabilitation and resettlement measures.

Mild penal provision: for willful obstruction, imprisonment for a period not exceeding one month or fine not exceeding five hundred rupees, has been prescribed.

Stringent penal provision: for giving false or misleading documents, imprisonment for a term which may extend to six months or with a fine extending to one lakh rupees or with both, and for any other contravention, imprisonment for six months which may extend to three years or fine or with both.

A perusal of the aspects shown in the above table may create an impression that the new legislation is infallible. However, the following drawbacks overturn the merits of the Act:

- One of the major drawbacks of the present legal framework is the existence of different statutes providing for different procedures, even though all of these statutes have a common aim - “acquisition for public purpose”. For instance, in the case of acquisition for high ways, the National High Ways Act, 1956 is
applicable. Similarly, for the acquisitions for railway, the Railways Act, 1989 is applicable. The new legislation also fails to address this issue. The applicability of the new legislation is also confined to the acquisitions for Government purposes as well as for public or private purposes: the subject matter covered under 13 statutes\textsuperscript{170}, including acquisitions for national highways or railways stated above, are left untouched. The Parliament could have enacted a comprehensive and self contained statute encompassing all acquisitions for public benefit.

- In the present democratic set up in India, it is difficult to get consensus of political parties in a social issue. Moreover, the outcome of the studies envisaged under the Act may be tainted with political motives. This may hamper the speedy acquisition process.

- There is no representation for the elected members of the Local Self Governments representing the Scheduled Caste or Scheduled Tribe, in the group constituted for the social impact study.

- Under the guise of ensuring food security, the Act requires that if any multi-cropped agricultural land has been acquired under the Act, the same extent of cultivable land has to be given to the displaced farmer. The logic in excluding this beneficial provision while acquiring other agricultural lands, remains a mystery.

- The incorporation of technical procedural requirements at different stages in getting compensation makes the legislation cumbersome.

- Against the backdrop of highly fluctuating land market, the calculation of market price on the basis of the land price at the time of preliminary notification seems to be unreasonable.

- On the economic front, the provisions of the Act attach an arbitrary mark-up to the historical market price to determine the compensation amount, along with numerous entitlements to the potentially unlimited number of claimants. This can guarantee neither social justice nor the efficient use of resources.

\textsuperscript{170} See, Appendix-IV, infra, p.267.
• The Act does not define the term “acquisition”. This leaves open a loophole that could allow Government agencies to continue banking land indefinitely.

• The Act fails to adequately define the term “public purpose”. The current definition can be interpreted vaguely. More clarity is needed. Otherwise, land acquisition will remain hostage to politics and all kinds of disputes.

• Once the payment is made, one or more of the affected families may seek to delay the progress of the project to extract additional compensation, thereby adversely affecting those who chose long term employment in the affected families. In order to avoid such difficulties, the Act should link compensation and entitlements to the progress and success of the project, such as through partial compensation in the form of land bonds. These success-linked infrastructure bonds may also help poor States to reduce the upfront cost of land acquisition for essential public projects such as hospitals, schools, universities, affordable housing, clean drinking water treatment plants, electricity power generation plants, sewage treatment plants, flood control reservoirs, and highways necessary to bring relief to affected public during fires, epidemics, earthquakes, floods and other natural disasters\textsuperscript{171}.

• The Act places no limit on total compensation or number of claimants. The Act should place a limit on the total value of entitlement benefits that can be annually claimed per acre. This entitlement pool should then be divided between the affected families, and the government should run this programme if it is considered to be fair.

• The Act severely curtails free market transactions between willing sellers and willing buyers. There should be no conditions imposed on free market transactions between willing sellers and willing buyers.

In the succeeding chapter, an attempt has been made to elicit various methods of fixation of compensation; and the guiding principles and factors thereof.

\textsuperscript{171} The State of Kerala has decided to pursue the use of infrastructure bonds as a form of payment to land owners.