CHAPTER X
CONCLUSION AND SUGGESTIONS

Ancient, medieval and modern philosophers have propounded various disparate theories about the ownership of property. Nevertheless, private property has been identified as a "social and legal institution". Following their foot prints, jurists have evolved the concepts of rights, obligations, liabilities etc. with regard to property; and foregrounded that property is "something" that belongs to "someone" and that it has to be protected by the State. Consequently, the international organisations felt the need for the protection of property rights.

The international initiatives in the form of Universal Declaration of Human Rights, 1948, European Convention on Human Rights, 1950, European Union (EU) Land Policy Guidelines, 2004, International Covenant on Civil and Political Rights, 1966, ILO Convention on Indigenous Peoples Rights, 1957, ILO Convention, 1989, and United Nations Declaration on the Rights of Indigenous Peoples, 2007, are directly or indirectly ensure the “right to land”; especially that of the indigenous peoples. Evidently, far more than any other section of humanity, the estimated 220 million most marginalized and deprived tribal people legitimately look forward to the UN protection. When the international system addresses indigenous peoples’ rights in a better way, the tribal people in India who form one third of the total indigenous peoples of the world, are denied the benefits of the aforesaid international norms; especially in the realm of land acquisition.

In almost all jurisdictions; whether it be Common Law or Continental or Socialist; private ownership is recognised and the rights of individuals over land and other properties are protected. However, the concept of ‘eminent domain’ and the principle embodied under the legal maxim, ‘Salus populi est suprema lex’ empowers the State to impose limitations upon individual interests; subject to ‘due process of law’. The Constitution of India also reflects these principles.

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1 See, Supra Chapter II, pp. 20-39.
2 See, Supra Chapter III, pp. 40-56.
3 See, Supra Chapter IV, pp. 57-76.
4 See, Chapter V, Supra, pp. 77-97.
Even a casual perusal of the judicial trend and the legislative initiatives vis-a-vis the acquisition of property reveals that on the one hand the courts have leaned towards protecting the property rights by ensuring the payment of adequate compensation for property rights acquired by the State; and on the other hand, the legislature has progressively, by amending the Constitution, reduced the occasions when compensation is payable for disturbance of property rights and has sought to minimize judicial scrutiny over land acquisition especially with regard to the payment of compensation to the displaced persons.

10.1 Drawbacks of the Present Land Acquisition Laws

At present, law relating to land acquisition in India remains scattered in the Indian Constitution, judicial decisions and different statutes like Land Acquisition Act, 1894; The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013; The Requisitioning and Acquisition of Immovable Property Act, 1952; The National Highways Act, 1956; The Railways Act, 1989; The Ancient Monuments and Archaeological Sites and Remains Act, 1958; The Atomic Energy Act, 1962; The Damodar Valley Corporation Act, 1948; The Indian Tramways Act, 1886; The Land Acquisition (Mines) Act, 1885; The Metro Railways (Construction of Works) Act, 1978; The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962; The Resettlement of Displaced Persons (Land Acquisition) Act, 1948; The Coal Bearing Areas Acquisition and Development Act, 1957; and The Electricity Act, 2003. The Indian Constitution merely endorses the concept of eminent domain; the procedure and other aspects of the land acquisition are left to the discretion of various administrative authorities; leaving room for arbitrariness.

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See, Article 31-A, B, C; and the 9th Schedule of the Constitution of India.
Even though the Constitutional as well the statutory provisions\(^7\) attempt to reconcile the conflicting interests of the State and the individuals in the realm of land acquisitions, the present law is subjected to constant and vehement criticism from various quarters; especially on the ground of failure to address properly the private interest; or more precisely, on the ground of failure to struck a proper balance between conflicting interests of the community and the private persons\(^8\).

Many people criticize the Land Acquisition Act, 1894 as draconian because in many of the acquisitions, especially in big projects for economic development, the element of public purpose is totally absent. Declaration of Special Economic Zones is the best example for usurping land from property owners, with the help of the Land Acquisition Act, at what is claimed as, well below the market value of these properties. It is argued that, even in the case of projects that are genuinely for public purposes, there is a considerable difference between the market value of the property and the value that the land acquisition officer pays to the land owners. It is also argued that the relocation and rehabilitation of land owners displaced by the actions of the government, is not followed up adequately, and that this is not covered comprehensively in the existing legal frame work.

The Land Acquisition Act, 1894, the kingpin legislation in India dealing with land acquisitions, as interpreted and applied today fails to do justice to the farmers and other sections of people, the silent majority who are in need of care and protection. Though the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 intended to repeal the existing Act, addresses some of the issues in this regard; the controversy remains unresolved. It is argued that small farmers holding land within the ceiling limit should be paid adequate compensation equal to the actual market value of the property; otherwise it is unfair and unjust. This fact has been recognised by apex court in *Bondu Ramaswamy v. Bangalore Development Authority*\(^9\), wherein it was observed that

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\(^7\) For a critical evaluation of the statutory regime in India, See *Supra* Chapter VI, pp.98-130.

\(^8\) See, *Supra* Chapter VII, pp.131-197.

\(^9\) 2010 (5) SCJ 462.
“acquisition of lands affects the vital rights of farmers and give rise to considerable litigations and agitations”\textsuperscript{10}.

But various authorities exercising powers under the Act had turned a blind eye towards the protection of the individual interest of the displaced persons. The spirit and meaning of the Preamble, Directive Principles and the Fundamental Rights enshrined in our Constitution protect individual interests of the displaced persons. Therefore, there is a need to remind such authorities that they exist to serve the people and not \textit{vice versa}. They can resort to ‘developmental activities’ by acquiring lands and forming layouts; but at the same time they have a social responsibility to ensure that the projects are beneficial to society.

Though the Land Acquisition Act, 1894 is the only legislation in India, prior to the repeal, to acquire ‘private land for public purpose’ it does not define the terms ‘acquisition” and “compensation”. Moreover, though the Act attempts a detailed definition of the expression “public purpose”; it exempted the application of the same meaning to the acquisitions for companies.

The Act is silent about how proposals for land acquisition are to be initiated. The provisions do not contain details regarding the land to be acquired and the notice to be served on the owner of the land\textsuperscript{11}. The owner of the land has no proper representation in this stage. After notification, the Collector has to proceed with the claim and has to mark out the site, measure and prepare a plan of the same. In other words, the initiation of acquisition proceedings is not at all transparent; the acquisition officer has no obligation to disclose the actual purpose of acquisition, the total extent of property to be acquired, the terms and conditions of the agreement executed between the Government and the company, if the acquisition is made for the company etc. This is a major drawback of the Act.

\textsuperscript{10} \textit{Ibid.}
\textsuperscript{11} See Section 4, Land Acquisition Act, 1894.
The powers of the Collector are not defined properly. He has uncontrolled and unqualified powers in relation to assessment of the value of the property, the conduct of enquiry, measurements, valuation of the claims and awarding of compensation under the umbrella of ‘public purpose’. Consequently, the Act becomes Collector-centric.

An umpteen number of amendments made to the Land Acquisition Act has not made any cardinal change in protecting the interest of the displaced persons. However, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 provides for a feasibility study in consultation with the inhabitants and experts about the social, economic, psychological and ecological impacts of the acquisition in order to remove fear from the minds of the people. In this regard it is suggested that the land owned or occupied by the government or large corporate sectors may be preferred to small holders.

Land acquisition law must ensure speedy, efficient and cheap procedures; in addition to fairness and equity, land owners must be given adequate facility to make objections; and anomalies must be rectified efficaciously. But the Land Acquisition Act, 1894 contains no such provisions.

Complaints and grievances are frequent with respect to the following:

(1) Absence of proper or adequate survey and planning before embarking upon acquisition.
(2) Indiscriminate use of emergency provisions.
(3) Notification of areas far larger than what is actually required for acquisition, and then making arbitrary deletions and withdrawals from the acquisitions.
(4) Offer of very low amount as compensation by the land acquisition Collectors, necessitating references to court in almost all cases.
(5) Inordinate delay in the payment of compensation; and
(6) Absence of rehabilitatory measures.
However, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 contains ample provisions for ensuring fair compensation to displaced persons and transparency in the process of acquisition and rehabilitation of those affected. The eagerness of the Parliament in incorporating almost all provisions of the United Nations Declaration on The Right of Indigenous Peoples, 2007 in the present legislation, is really laudable. But many critics point out that this Act is only for soothing voters in the coming Lok Sabha election in 2014. This seems to be true since the Parliament has ignored many crucial points raised in the report of the Standing Committee on Rural Development pertaining to agricultural land\textsuperscript{12}.

Moreover, the new legislation intentionally avoided the word ‘just’; and instead of it, used the word ‘fair’ as a pre-fix to the term ‘compensation’. It is suggested that the word ‘just compensation’ shall be incorporated in the Act. In this context, it is to be noted that the U.S law provides for “just compensation”; and the South Australian statute mandates “just terms”.

Similarly, the term ‘market value’ defined under the new legislation does not make a major difference with the existing law. Under the new Act, market value may be the value prescribed by the Indian Stamp Act or the average sale price for similar type of land situated in the nearest village or nearest vicinity\textsuperscript{13}. But, by virtue of the provisions of the Land Acquisition Act, 1894, market value is the highest of the price paid within a reasonable time in \textit{bona fide} transactions of purchase of the lands within

\textsuperscript{12} \textit{http://www.frontline.in/the-nation/veneer-of-fairness/article5127975.ece.} (visited on 20/09/2013): Many crucial points raised in the 31st report of the Standing Committee on Rural Development pertaining to agricultural and multi-crop land as well as about narrowing the ambit of public purpose were roundly ignored in the final run-up to the legislation. What is most significant is that the provisions regarding rehabilitation and resettlement (R&R) shall not apply to acquisitions made under the 13 existing Acts. The Standing Committee had recommended the inclusion of the 13 Acts. Several members who spoke on the floor of both Houses of Parliament said land should not be acquired for private purposes but rather be given on lease. Some even suggested that the titles should remain with the owners.

\textsuperscript{13} See Section 26, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
the similar locality\textsuperscript{14}. Consequently, the amount has been reduced as ‘average of the similar sale deeds’.

The major drawbacks of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are as follows:

- It is not clear whether the Parliament has jurisdiction to impose rehabilitation and resettlement requirements on private purchase of agricultural land.

- The Act mandates that whenever multi-crop irrigated land is acquired, an equivalent area of cultivable waste land should be developed for agricultural purpose. However, acquisitions of other irrigated agricultural land have been excluded from this provision. This limited exclusion seems rather half-hearted.

- The Act expresses no serious concern about avoiding or minimising displacements. Similarly, the principles of ‘no forced displacement’ and ‘free, informed prior consent’ are not incorporated. Moreover, the requirement of consent of 80 per cent of the land-owners is made applicable only to land acquisition by the government for companies including public private participation cases, and not to governmental acquisition for itself\textsuperscript{15}. It appears that there has been no dilution at all of ‘eminent domain’.

- The present Act increases the compensation amount significantly; but the problems of delay and corruption in the payment process will remain unabated.

\textsuperscript{14} See Section 23 (1), The Land Acquisition Act, 1894; See also, \textit{Sadanand v. Union of India}, (1995) LACC 333 (Del).

\textsuperscript{15} Section 2 (2), The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:— (a) for public private partnership projects, where the ownership of the land continues to vest with the government, for public purpose as defined in subsection (1); (b) for private companies for public purpose, as defined in sub-section (1); Provided that in the case of acquisition for— (i) private companies, the prior consent of at least eighty per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; and (ii) public private partnership projects, the prior consent of at least seventy per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3, shall be obtained through a process as may be prescribed by the appropriate Government.
• The basic question as to why the State should use its sovereign power to acquire land for private companies which are primarily in business for profit and not for conferring benefits on the public, has not been answered properly.

• The Act provides no mechanism to reduce the asymmetry of power between those who wish to acquire the land and those whose lands are being acquired. It extends the rehabilitation and resettlement provisions to private negotiated purchases of land but provides no safeguard against unfair negotiation. The legality of extension of the rehabilitation and resettlement provisions to negotiated purchases may be challenged in the court. If the compensation that the land-owners would have received under the Act if the land had been acquired by the government would be higher than the price negotiated by the company with the land-owners, then nothing in the Act protects the interests of the displaced persons.

• Transfer of agricultural land to non-agricultural use naturally affects food security. Thus all acquisitions of agricultural land including acquisition for private company must be done only by the State; and purchase of agricultural land should be subject to State regulation from the point of view of land-use. On the whole, the answer to the question of minimising transfers of agricultural land to non-agricultural use might lie in policies supportive of agriculture rather than in control or regulation over land transactions.

• An issue that has persistently figured in the debate during the last decade or two is the need to narrow the definition of ‘public purpose’; and limit it to a few strictly governmental purposes (schools, dispensaries, etc.). The present Act moves in exactly the opposite direction. It defines ‘public purpose’ very broadly and leaves it to the bureaucracy to decide each case. Is it right to assume that any industry ipso facto serves a public purpose warranting the alienation of agricultural land? For instance, in the ‘Singur episode’ land acquisition was for an ‘industry', i.e., Tata’s small car factory. Was that a 'public purpose'? Any way, it can be so declared under the present Act.
• As per the new legislation, the term ‘infrastructure' includes ‘tourism', which would permit the acquisition of land for building hotels. It seems desirable to define 'public purpose' somewhat more stringently.

• The Act refers to loss of primary livelihoods; but links it to the acquisition of land. The term ‘livelihoods' is illustrated by a reference to the gathering of forest produce; hunting, fishing, etc. There is no reference to the sellers of goods and services in the project area, who will lose their livelihoods when the people whom they serve move away to resettlement areas. It is not clear whether they will be regarded as ‘project-affected persons’.

• The Social Impact Assessment (SIA) in the present Act is an improvement on the 2007 Bill, but the idea of SIA still falls short: it does not cover the disappearance of a whole way of life; the dispersal of close-knit communities; the loss of centuries-old relationship with nature; the loss of roots; and so on. It is good that the SIA will be reviewed by an independent multi-disciplinary expert body, but it should first be prepared by a similar body. But the Act leaves SIA to be prepared by the “appropriate government.”

• The rehabilitation package envisaged under the Act is distinctly inferior to the packages already established in certain projects: Firstly, the principle of ‘land for land' has been abandoned. The Act envisages one acre per family instead of two acres as in the Sardar Sarovar Project. Secondly, compensation and rehabilitation should have reference not to the nature of the project but to the nature of the impact. Whatever be the project, if an agricultural community is uprooted from its land and homestead, it has to be enabled to practise agriculture elsewhere, and not expected to become carpenters or weavers or traders.

• In the case of the projects involving land acquisitions undertaken for private companies or public private partnerships, the Act mandates the consent of 80 per cent of the people affected. However, no such consent is required in the case of PSUs.
The Act provides for the appointment or constitution of a number of officials and institutions such as the Collector, the Administrator of Rehabilitation and Resettlement, the Commissioner of Rehabilitation and Resettlement, the National Monitoring Committee etc. Only in the Rehabilitation and Resettlement Committee, a significant number of non-officials are present. The National Monitoring Committee is not ‘participatory'; apart from officials, it includes only a few experts. As indicated earlier, the idea of a National Rehabilitation Commission has been abandoned.

The requirement of a Social Impact Assessment for every acquisition without a minimum threshold may delay the implementation of certain government programmes.

By invoking the provisions of the Act, the government can temporarily acquire land for a maximum period of three years. However, there is no provision for rehabilitation and resettlement in such cases.

It is not clear why displacement by natural calamities should be brought within the purview of this Act. There is a vital difference between unavoidable displacement caused by nature and deliberate displacement caused by human decisions.

In conclusion, it can be said that the Act seems to be essentially driven by a desire to make land acquisition easier for industrialisation and urbanisation. The Act which does not properly address many of the vital issues requires substantial improvement. Indian experience and conception of property have a very different historical basis than that of western economies. This also seems to be the hidden reason why the right to property is suddenly much contested throughout India today and why the State is coming up unexpectedly against huge resistance from unexpected

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quarters in attempting to acquire land in India. In this regard, the following changes shall be brought in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 so as to balance the interest of the community and that of the individual.

10.2 SUGGESTIONS

- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which is intended to repeal the Land Acquisition Act, 1894 must necessarily be changed in many core areas: For instance, the definition of the term ‘fair rent’, provisions relating to award by Collector, the discrimination between ‘multi crop agricultural land’ and ‘other agricultural land’, artificial distinction between ‘Government Company’ and ‘Public Companies’ for certain purposes etc.

- Prior consultation of inhabitants shall be made compulsory.

- The time frame for the completion of acquisition shall be fixed as one year from the date of notification.

- The entire acquisition process shall be monitored by a committee comprising higher officials, experts and sufficient number of representatives of the displaced persons.

- Instead of the Collector, a new quasi-judicial authority with sufficient powers to award compensation may be constituted; with a provision to prefer appeal to the District Court. Such independent authorities exist in many legal systems like the Expropriation Compensation Board constituted under the Expropriation Act, 1996 in British Columbia.

- Steps may be taken to avoid inordinate delay in the completion of acquisition procedures and the erring officials, penalised.

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• Lands belonging to poor peasants shall be acquired only as a last resort.

• The concept of ‘just compensation’ must be incorporated in the Act instead of “fair compensation”.

• The market value of the property has to be calculated on the basis of the value prevalent at the time when the government gets actual possession of the property. Moreover, the valuation of property should be revised in every year. In addition to the market value, an amount for future existence may be provided.

• Pension schemes must be introduced for poor persons whose property has been completely taken for public purpose.

• In order to protect the interest of the displaced persons, classification of property for the purpose of valuation should be rational rather than arithmetic progression.

• Complaints, irregularities and omissions in lay out and plan, including classification of property, must be properly rectified by an independent authority.

• Very often, after having taken possession of the acquired land, the government changes the “purpose” for which the acquisition took place. In such cases, the property may be re-transferred to the original owners with sufficient compensation for the loss incurred due to acquisition.

• Consent of the majority of inhabitants should be sought for the acquisition of property for Government companies also.

• In the case of purchase of land for private companies, governmental interference shall be the minimum. In such cases, the role of the government shall be confined to monitoring the process.
• Tailor-made schemes suited to ‘particular’ acquisitions should be avoided. Schemes which will be ‘litigation free’ and beneficial to all affected parties should be evolved. Proper planning, adequate counseling and timely mediation with different groups of land-losers should be resorted to.

• While undertaking resettlement measures, ‘priority rule’ has to be adopted: priority shall be given to those persons whose land has been acquired completely; and that too, on the basis of income levels.

• The following key factors shall be considered while acquiring land for private companies:

(a) Geography, quality, location and size of the land made available to the investors.

(b) Type of the company that wishes to acquire land and are accepted by the host governments, their business plan and the willingness to invest responsibly.

(c) Rights of the local inhabitants and their ability to protect their rights and develop alternative livelihoods.

(d) Interests of the farmers’ groups and organizations.

(e) Fertility of the agricultural lands, environmental equilibrium etc.

(f) Contract negotiations, the price of the land and the conditions placed on the use of resources.

(g) Sustainable land use and economic integration.

(h) Employment opportunities and re-settlement programmes.

(i) Feasibility of allotment of sufficient number of shares of the company to the displaced persons, in addition to the compensation awarded to them.
• The name of the new legislation, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, creates the impression that the Act protects the rights of all displaced persons irrespective of the statutes under which the land was acquired. Hence the legislature could have avoided the “exclusion clause” as given in the schedule 4.

On the whole, the present doctrinal study as well as the empirical data revealed that the existing legal framework for land acquisition has miserably failed to protect the interests of the affected persons and to strike a proper balance between the competing individual interest and community interest. Hence, the present issues must be sorted out jointly by the policy makers, social scientists, legislators and economists\(^\text{18}\); and the enactment of a comprehensive law that properly addresses the social, psychological, economical and legal implications of land acquisition shall be mooted. In this context, the observation of Oliver Wendell Homes J. is relevant:

For the rational study of the law, the black-letter man may be the man of the present; but the man of the future is the man of statistics and the master of economics…We learn that for everything, we have to give up something else; and we are taught to set the advantage we gain against the other advantage we lose, and to know what we are doing when we elect\(^\text{19}\).

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\(^{19}\) Oliver Wendell Homes, “The Path of the Law”, 10 *HLR* 469 (1897).