CHAPTER-V
ACQUISITION OF LAND: DEVELOPMENT, DISPLACEMENT AND HUMAN RIGHTS

5.1 Introduction

More than 50 years ago least developed countries all over the world were liberating themselves from colonial bondage. Economists had started to give serious thought as to what the optimal course of development would be initiating thereby a new discipline called development economics. The primary constraint was thought to be the scarcity of capital. Prof. Levis described development as a process of transferring labor from low productivity agriculture and other traditional occupations to high productivity modern industry. Economic development is directly related to creation of infrastructure so far as the geographical situation is concerned, irrigation projects, hydroelectric projects and mining projects are made by the State.

Independent India began with the Nehru vision that big dams and mega development projects are modern temple of development. In the post-independence period India has sought rapid economic growth through planned development. This has entailed large scale investments in dams, roads, mines, power plants, industrial estate new cities and other projects involving land acquisition. Since independence land has been acquired from people particularly from farmers for the purpose of expending towns/cities by converting agricultural land into non agricultural land. In the name of industrialization a larger portion of land was being acquired from the people for ‘public purpose' and ‘development’ and was later handed over to private companies.

The public perception on the land acquisition is generally negative when land acquired by the government on behalf of the private sector whose sole objective is seen to be the profit maximization. In contrast, people too more tolerant to acquisition by the government, as the project promoted by the public sector are perceived to enhance the welfare of the society at large and not that of any private

---

1 Abhor Starker, ‘Development and Displacement Land Acquisition in West Bengal’, EPW 1435 (21 April 2007)
person or group. Traditionally, bulk of the land has been acquired by the government (defense, railways etc.) or public sector undertakings. With the liberalization, growth in infrastructure as well as industry has become increasingly privatized, resulting in higher private demand for land.\(^5\)

Indian’s population density has increased by over three times since 1951. With the rise in population density as well as in demand for new development projects to serve a larger population, land acquisition proposals have witnessed on increasingly wider resistance than before, because not only more land being demanded, but also more people have to be displaced for the same size land. Another impact of rising population is the increase in demand for land by the household sector, mainly for habitation. The incremental demand for land may be negligible in comparison to the total land mass of India, but the problem arises because the supply is not forthcoming in areas where land is in demand. (No one is would set up commercial infrastructure in deserts, for example just because land is available there).\(^6\)

The Land Acquisition Act is statutory statement of the State’s power of eminent domain which empower the State with ultimate control over land within its territory. It denies to the person from whom the land is acquired the right to exercise choice as to whether to part with the land or not as long as the acquisition is avowedly for a public purpose.\(^7\) Both development and conservation are intricately on the doctrine of eminent domain. In its classification sense, eminent domain means the power of the state to take over private land for a public purpose. Compensation change the nature of this take over from appropriation to acquisition. This doctrine is embedded in the Land Acquisition Act 1894, and over the time jurisprudence has developed around the text and use of a law which privileges the power of the State while making it more or less vulnerable to challenge under the law.\(^8\)

Through the history of mankind witnessed that societies have tried to balance between individual rights and power of State. With the increasing pressure on land due to urbanization, rapid economic development, increasing infrastructure requirements etc., especially in a fast growing economy like India, the acquisition of

---

\(^5\) Indian infrastructure Report 2009.  
\(^6\) Indian infrastructure report 2009.  
\(^8\) Ibid at 1486
land by the government has increased. Indian Government under doctrine of “eminent
domain” acquired land of individual persons for ‘greater good’ and ‘development’
purposes, as result of which millions of people become displaced from their homes. At
international level it is viewed as violation of human Rights.

Mega development projects like construction of dams, industries, highways and
roads resulted in forced displacement of people. It has been found that usually it is
the poor people who face the consequences of such projects more because their
livelihood, habitat and assets are affected. Where “involuntary resettlement” has
received public attention, either through NGOs or media intervention, the State
administration has responded. In most of the cases such displacements have resulted
in loss of livelihood and shelter. Resettlement and rehabilitation and peripheral or
local area development are the key issues of any developmental activity. The aim of
any rehabilitation and resettlement (R & R) plan is to mitigate all unavoidable
negative impacts caused due to the project and to resettle the affected persons and
restore their livelihoods. The Rehabilitation and Resettlement Plan has been
prepared based on socio-economic survey of the affected population and consultation
with various stakeholders. The plan has not only tried to compensate the loss of
livelihood and assets of the affected families but has also keep the provisions for
infrastructural development in the periphery. Special provisions for the development
of tribes, disabled persons, students and weaker sections are included to satisfy
aspirations of affected population. In order to empower and satisfy the project
affected persons (directly or indirectly) a comprehensive National Rehabilitation and
Resettlement Policy (NRRP, 2007) has already been circulated by the Ministry of
Rural Development, Government of India. Same does not seem to be adequate to
fulfill the aspirations of people due to different cultures, traditions, languages and
different climatic conditions in different States of the Indian union. As a result, some
States have come up with their own Rehabilitation and Resettlement Policy which not
only provides a better relief package but take care of the regional issues and
aspirations. However, governmental polies are neither binding on the government
nor on the individual hence, it could not be enforced effectively. Therefore, to

\[ http://www.lawyersclubindia.com/articles/rehabilitation-and-resettlement-of-displaced-person-due-to-d-1471.asp (accessed on 12/05/2014) \]
remedied to the displaced persons problems governmental proposal to have a unified legislation. As such the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force. It administered the both areas of rehabilitation and resettlement and acquisition.

5.2 Development induced Displacement

India is one of the largest dam building nation in the world. There are 4,291 dams in India since India has got independence in 1947 it emerges that large dams are the single largest cause of displacement in India, SEZ or industrial development are the next major cause for displacement. Development induced displacement can be defined as forcing the communities and individuals out of their homes, often also their homelands, for the purpose of economic development. Displacement is deemed to be a necessary price to pay for development. For whose instance property acquired and people are displaced, for them development means only economic growth but others who viewed that development not only as economic growth but primarily as improvement of the standard of living of the whole population. In that sense, displacement is not an economic issue alone, but is to a great extent a question of human rights. Besides, displacement and rehabilitation are to be viewed not as one time event but as process that begins as soon as the project is announced and continues for several years after persons are resettled. Further the standards of Resettlement and Rehabilitation (R and R) of people displaced by development projects have been vary poor in most cases. In the absence of adequate resettlement, most of the displaced people, and especially those belonging to disadvantaged social groups, have been reduced to poverty and destitution.

The Human Rights Declaration states that everyone has the right to life, liberty and security. Under the heading of economic, social and cultural rights, all government are expected to try progressively to improve the living conditions of their citizens. But studies show that forced displacements have created potential risks like “landlessness, nobleness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property and social

---

14 Supra note 4, at 281.
disarticulation, impoverishment. The relationships that were once kinship based became individualistic and the traditional institution which held the society together, suddenly got jeopardized what anthropologists call disorganization.\textsuperscript{16}

Development caused displacement generates varied responses from different sections of the society and it also creates a different impact on the lives of people. It is generally believed that development efforts which does not leave majority of its people worse off and promotes health, education and income could be regarded as participatory. But most of the development projects operate in totally opposite direction where majority of the project affected families are left themselves with poorly planned, badly executed, inappropriate and inadequate rehabilitation plans. Rehabilitation and resettlement for all of them becomes more difficult in the absence of state level policy and legislative mechanisms. This is the case of India where compulsory acquisition of land for public purpose particularly for infrastructural and industrial projects in public and private sector has aggravated the already existing inequalities and is instrumental in uprooting people from their natural habitats both in the pre and post-colonial periods. With globalization and trade liberalization, the increased demand for land has provided further boost to the miseries of displaced persons evicting them from their homes and forcing them to give away their assets and means of livelihood. Women are the worst affected among the displaced people. Being the otherwise most discriminated and vulnerable, displacement add to their already existing miseries. Development process thus has brought forward the biggest challenge of resettlement and rehabilitation of the persons displaced by the development projects. With a long history of displacement complemented by a poor record of rehabilitation; a conservative estimate reveals that from 1951 to 1991, around 21 million people have been displaced from their locations for the purpose of dams, mines, industries and wildlife sanctuaries. Land was acquired in India under the Land Acquisition Act (LAA), 1894 and the Act did not provide for rehabilitation and resettlement of displaced persons. Since then until 1985, no State government or central government enacted legislation or a policy for resettlement and rehabilitation of displaced persons. It was only when States like Madhya Pradesh in 1985, Karnataka in 1987 and Maharashtra in 1989 enacted laws however, without properly

\textsuperscript{16} Bhubanshwar Sabar, ‘Development Induced Displacement and Human Rights Violation of Orissa: An Anthropological Insight’, 60 Social Action 177 (April-June 2010).
laid down rules and regulations for resettlement and rehabilitation of the people displaced from State-level water resource projects; the legacy of the colonial government was broken. Public sector companies like National Thermal Power Corporation (NTPC) and Coal India Limited (CIL) also came out with their policies in 1993 and 1994 respectively. These policies were, however, alleged to be formulated under the pressure of the World Bank.  

5.3 Rethinking of ‘Development’

While referring to the acquisition of land for “development” purposes it is important to understand what constitutes “development itself. Since last decades, development has been looked at as something beyond a mere growth in GDP”, that is, an over all human development. The human development reports look at ‘development’ as increasing people’s choices. There have also been the arise certain basic needs or basic capabilities that all people are entitled to, for a society to ensure true development. If this be so, it is essential that the laws of democratic country ensure that due to acquisition of land for growth of few, the displaced persons are not made worst off.

There is no doubt that in many developing countries, the involuntary resettlement will increase in future days. In India, between 1.5 and 2 million people have been involuntarily resettled due to urbanization, industrialization and agricultural modernization. No policy or legislative space or source was provided for assessing social and environmental impacts, for well over sixty-five years of independence. Till 31st December 2013 it was continued to remain guided by the colonial notion of State having eminent domain over all the resource. The definition, public purpose enabled the State to acquire land “in public interest” or for a “company” for any developmental activity. By measuring everything in monetary terms, the State struck to the formula of compensating land holders and tenants, as the only adequate and appropriate form of relief for the displaced. Mere monetary compensation is not adequate to the land losers because they are usurped from their livelihood.


Supra note 4, at 283.
5.4 Internally Displaced Persons in India

The effects of the displacement spill over generations in many ways such as loss of traditional means of employment (livelihood), change of environment, disrupted community life and relationship, marginalization, a profound psychological trauma. It destroys the existing modes of production affects kinship and impoverishment and threatens cultural identity of tribal and ethnic minorities. In addition forced resettlement tends to be associated with increased sociocultural and psychological stresses and higher morbidity and mortality rates. Population displacement, therefore, disrupts economic and socio cultural structures. People who are displaced undergo tremendous stress as they lose productivity process-land otherwise in the adjustment process.21

But for the government and its agents, cash compensation seems to be the only panacea for the problems induced by displacement. Only policy of rehabilitation, whereas, in practice is the most inadequate means for rehabilitation. The development induced displaced person are also facing the same situation as compared to the induced displaced persons. The Narmada Dam case exemplifies displacement without proper rehabilitation. Thousands of people mostly tribal have been displaced due to the dams built across the River Narmada. More than 2,000 families displaced by the multipurpose Hirakulnd dam project in Sambalpur district of Orissa were not compensated as of February 2002.

In 2007, the land acquisition issue in Singur for setting up a automobile project, Nandigram area of West Bengal turned in to a battle field between the state police officials and anti-Land Acquisition Bhumi Uchhed Pratirodh Committee (BUPC) {LAND EVICTION RESISTANCE COMMITTEE} comprising of the poor who were unwilling to sell their lands. Numerous supporters of the BUPC were killed, women were raped and at least 1500 persons were displaced from their homes. On 16th November 2007, the Calcutta High Court declared the police killings as “unconstitutional” unjustified and awarded compensation of Rs 500,000 each to those killed, Rs 200,000 to each of the rape victims and 100,000 to each injured person.22

Another important, impact of displacement is the problem of scheduling and certification. The displaced people are generally not rehabilitated in the form of home

21 Supra note 2, at 1486.
22 Supra note 16, at 193 & 194.
and land but by money. Very few are given land in the new areas, which creates conflict with the already existing groups. They are not recognized as tribal in the areas of they do not have certificate of proof of residence in the new place and thus lose their tribal identity.\textsuperscript{23} Resetting the displaced poor, remote and economically disadvantaged is not always an easy task.\textsuperscript{24} Much more such consequences lead to the requirement of legislations to addresses not only the issue of compensation but also resettlement, rehabilitation and participation in negotiation.\textsuperscript{25}

Rehabilitation is a process of nurturing people affected by projects. Projects may be irrigation projects, power projects or a defense projects the concern is about those who loose their property and displaced for the sake of general good. In rehabilitation process what is important is the package involved. Package differs from project to project, normally cash component is invariably involved in all projects in addition to provide space for housing. For Example in Narmada project (sea bird project) loss of land was compensated by land was package item. Scarcity of agricultural land to the land looser was a problem in Narmada project. The main hurdle in the Narmada project was right of the tribal were not established to their cultivating land. Thus issues very from project to project.\textsuperscript{26}

5.5 Traumata Displacement

There are two types of displacement:- (1) displacement effected by natural disasters is the forms of draughts, floods, earthquakes and cyclone (2) the second type is displacement due to developmental projects like dams, mines, thermal power plants, industries, rail-ways, roads, ports and others. Among these two, former is the one is not subject to human control but the latter is purely human made phenomena and this type of displacement is pre planned or forced displacement. In both the types of displacement, the victims are poor and weaker section of the society who do not either have economic stability or educational accomplishments to migrate to safer areas.\textsuperscript{27} Today in India internal displacement concentrates a large share of people’s wealth in the hands of few. In the process of ‘development’ there is

\begin{itemize}
\item \textsuperscript{23}Supra note 16, at 178.
\item \textsuperscript{24}Supra note 19, at 1486.
\item \textsuperscript{25}Supra note 16, at 179.
\item \textsuperscript{26}Dr.C. Nagaiah ‘\textit{Resettlement and Rehabilitation: Upper Krishna Project}’, (unpublished manuscript, on file with author)
\item \textsuperscript{27}Ramesh C. Nayak, ‘\textit{Development and Displacement in Kaling Nagar, Orissa}’, 58 Social Action 24(Jan-Mar 2008).
\end{itemize}
‘disempowerment’ of the subalterns. The rich become richer and poor become much more poor due to explorative and dehumanizing strategies of the powerful.\(^{28}\)

To understand why displacement is traumatic and it not undertaken correctly, it is important to comprehend what land means to a farmer, beyond the primal (irrational) urges that seems to bind human beings to their lands. For one land is an asset that provides him food and a livelihood. Second, it enables him to utilize the major (and sometimes the only) skill that he possesses working on the land. Third it can be passed on to the next generation and hence provides security to several generations. And fourth, it is marketable and in sometimes distress serves as collateral. Cash compensation as the only means of rehabilitating displaced people is a classic middle class response to the problem of the poor. It shows a complete lack of understanding of the livelihood relations that the “most helpless man” that Gandhi referred to has with land. It is a response that is singularly indicative of lack of application of mind. Public has completely forgotten that the family getting displaced also a part of public.

Since India is a democratic nation, acquiring land for infrastructure projects and industrial development has often been problematic. People who are displaced by projects and receive inadequate compensation can express their dissatisfaction openly through political participation and protest. When land is acquired or used by private companies as apposed to infrastructure projects such as roads meant for public use, the level of dissatisfaction is often higher.\(^{29}\) Involuntary displacement of human population is a tragedy although international attention to the plight of internally displaced people has grown significantly over the past years, there was still no breakthrough in reducing the numbers and measurably improving the situation of those who had been forced to flee their homes as a result of development project.\(^{30}\) Displacement or forced migration hinders development in at least four ways by increasing pressure on urban infrastructure and services understanding economic growth, increasing the risk of conflict and leading to worse health, educational and social indicators among the migrants themselves.\(^{31}\)

\(^{28}\)Joseph Marianas Kujur, ‘Development Induced Displacement in Chhattisgarh-A Case Study from a Tribal Perspective’ 58 Social Action 24 (Jan-Mar 2000).


\(^{30}\)Anupam Hazra, ‘Development at the Cost of Human Life’, 60 Social Action 184 (April/June 2010).

\(^{31}\)Supra note 29, at 184.
The year of 2004 has seen that forced displacement of hundreds of tribal from the inner States of India in Chhattisgarh, due to the governmental plan to bring tourism to the area though development of national park. In Chhattisgarh itself almost 17 lakh acres of land have been demarcated as protected area for the sake of wild life conservation where people face the threat of eviction. Accordingly, majority of them are adhivasi and dalits wherein government tourism projects have proposed.

These has been a shift in the pattern of land acquisition from the past. In the past most of the development projects were in the category of the water resources. Now most of the project are in the mining and industry sector some projects are also in the areas of tourism, transport and communication and infrastructure. A dangerous shift is the land acquisition that has taken place recently is the model of evacuation of the villages by salwa judum type ‘projects’ displacing thousands of tribal from their homeland under the pretext of counteracting naxalism.

5.6 Displaced Tribal people problems

A special dimension of the problem of displacement, resettlement and rehabilitation in India has been prevailed in a large proportion of tribals among those displaced. Tribal cultures are distinct from those of the groups belonging to the modern economy. They are also marginalized from the main stream of political system and vulnerable to exploitation. The special needs of tribals have not been taken into the account in past resettlement plans and policies and the tribal encounter with the modern economy through displacement has mostly resulted in material impoverishment and social disintegration.

Tribals are more displaced persons from majority of the development induced displaced persons. As per the survey of Faction Aid and Indian Social Institute, over 14 million people have been displaced from their homes in four States of Andrapradesh, Chhattisgarh, Orissa and Jharkhand. A total of 10.2 million acres have been acquired for setting up of development projects such as mines industrial plants and dams in last decade. Out of 14 million displaced persons in these four States, 79 percent were tribals. Studies on the social impact of development projects suggest that indigenous people and ethnic minorities are disproportionately affected. In India,
adhivasi or tribal people, although only representing 8 per cent of the total population, make up 40-50 per cent of the displaced.\textsuperscript{35} Formal or informal interaction can be seen also in the next step i.e., in the process of land take over. There was agitation in some projects but our surprise is that agitation in most cases was not by the powerful middle cast medium farmers, but by the tribals and other apparently powerless communities.

After deeper analysis and discussion with the villagers it was realized that firstly, their direct dependence on common proper resources (CPR) is greater than that of the middle level formers. Secondly, being less exposed to the mainstream society and economy than the middle level farmers, they can not expect many benefits from the project to flow to them. Finally, there is greater homogeneity among them than among the middle caste.\textsuperscript{36} The decision on displacement adds to this ongoing sense of threat to their livelihood and insecurity. Similar is the situation with the dalits, particularly the landless labors among them who depend for their survival on the village as a community. Disappearance of the village is the threat to their livelihood. Where possible they react to this situation by trying to define their livelihood.\textsuperscript{37}

Secondly, living as they do in a "backward area; the tribal have less access to education and other services and are less exposed to the mainstream economy than the middle farmers. Consequently, they cannot hope to get skilled or semiskilled jobs in the new scheme. Thus unlike the middle farmers who can hope for benefits both by commercializing their land and through semi skilled or skilled jobs. Tribal and dalits find themselves in a position of losing their land and CPR without any alternative in their place. They therefore, need to defend themselves more than the middle farmers do.\textsuperscript{38} As a result of loss of land through displacement deprives them by their livelihood with the no other economic base to take its place. It impoverishes the tribals more than others.\textsuperscript{39} On the one hand for the developed countries the displacement problem is not so big due to balance of land and man ratio. On the other hand for the developing countries, the displacement problem has emerged as an issue due to adverse land and man ratio. According to the statistical estimates, 2 crore

\textsuperscript{35} Supra note 30, at 192.  
\textsuperscript{36} Supra note 34, at 27.  
\textsuperscript{37} Supra note 34, at 28.  
\textsuperscript{38} Supra note 34, at 28.  
\textsuperscript{39} Supra note 34, at 30.
people out of which 85 lakhs are tribal have been displaced from their native places from 1957 to 1990 due to the construction, irrigation projects, mining projects and national highway projects.\textsuperscript{40}

In a democratic country, where displacement takes place by the government or private collaboration with government, it is the responsibility of the government to take care of the displaced people by providing rehabilitation and resettlement. Under the Constitution of India, there is a provision for those who are migrated from their native place after partition between Pakistan and India for the government of India to take care for their rehabilitation and settlement. Though there is a provision for reservation for the SCs and STs population in different spheres, there is no provision in the Constitution for SCs and STs people who are displaced from their native places due to the construction of development projects by the government.\textsuperscript{41}

Large number of people have been displaced from original habitats to make way for development projects. People dependent upon the land, forest and other natural resource for their livelihoods have been displaced of their sources of subsistence through land acquisition and displacement. Further the standards of rehabilitation and resettlement (R& R) of displaced people have been very poor. In most of the displaced people especially those belonging to disadvantaged social groups have been reduced to poverty and destination. One major reason for this dismissal situation has been that the absence of a national policy on rehabilitation and resettlement. The past have based on ad hoc planed and piecemeal resettlement initiatives at the state level project have proved largely ineffective and harmful in some cases. The provisions of these (ad hoc) polices have been inadequate and discriminatory leaving large number of people worse off which are otherwise supposed to provide general benefit.\textsuperscript{42}

According to the International Labor Organization (ILO) Convention No. 7, a clear cut guidance has been mentioned particularly for STs rehabilitation and resettlement. An expert committee had suggested reservation plan for resettlement of tribal people in the 7\textsuperscript{th} five year plan. In 1990, the Ministry of Social Justice and Welfare Department of the Government of India had prepared a plan for resettlement.

\textsuperscript{40} Ashok Kumar Sahay and Prabira Sethy, ‘Tribal Displacement and Resettlement Effective Safeguard’, 58 Social Action 24(Jan-Mar 2000).
\textsuperscript{41} Ibid at 2
\textsuperscript{42} Supra note 3, at 1461
of tribal people and wanted to know the opinion of the States in this regard. But the plan did not take a concrete shape. Therefore each State government is making different ad hoc measure for their different projects.\textsuperscript{43}

Development and displacement has direct link with STs Population. The government should formulate the plans and polices for resettlement of these people on the priority basis. But the paradox of the institution is that government is paying little action to resettlement plans and policies of the land ousters. Land for land and jobs to land losers in the new projects have been rationale solutions but practically these do not work any where. There is always no sufficient suitable land elsewhere to make land for lands scheme work. Modern manufactory and other activities are skill based rather than labor intensive and can absorb only limited numbers of unskilled labor of the kind.\textsuperscript{44}

In the first four decades, since independence, 40 per cent. of people who lost their land in State sponsored activities like mining, dam building and other infrastructure projects have been tribals only and 25\% of them have been resettled and rehabilitated. Increasingly people threatened by development are refusing to sacrifice their interest for the larger common good. The resistance is largely due to State’s failure to provide adequate compensation to the land holders and unable to ensure resettlement and rehabilitation of ousters. Absence of redressal mechanism in every State, alienated communication turn to extremist political ideologies meioses violence of Central Government is apolitical expression of violence against forcible acquisition of land.\textsuperscript{45}

5.7 Consequences of Monetary Compensation

Since the legal basis for land acquisition may very from State to State and region to region, a national land acquisition and resettlement policy should be flexible enough as an instrument for guidelines, leaving the details to local authority for local decisions on the merits of individual projects. During pre-independence and post-independence period land acquisition law requires prompt and adequate monetary compensation for the persons whose land has been acquired. However, cash

\textsuperscript{43} Supra note 40, at 3.
\textsuperscript{44} Supra note 40, at 4.
\textsuperscript{45} Supra note 28, at 31.
compensation has many negative consequences, particularly in tribal and other marginal populations.

The sudden cash in the hands of land losers particularly in the hands of tribals or dalits gave false impression to them they are wealthiest. They changed their life style and involved in gambling and drinking increased to an unprecedented level. Finally, cash compensation disproportionately benefits some interest groups (i.e. big land lords) and not so much poor and small scale formers, the landless, and women. Though money plays an important role in our life, it cannot be the only way measuring everything. In market centered economy try to measure everything in terms of money. Can hard cash provide security and livelihood to a poor farmer who owns only a few acres of land, has not knew traveled beyond few kilometers of his village, has deal with only few rupees or hundreds and who hardly knows to read and write, they do not understand the logistics of money, market, industry, senses etc. of business man. Basically the concept of cash compensation fails to understand the habits of farmers, tribal and the dalits in the villages who are unaccustomed to the handling of such huge money. Secondly, in cash compensation it is only the owners of land who are considered. In villages it is not only the farmers but also many others who are sharecroppers, agricultural workers, artisans and pastoralists also lose their livelihood.

5.8 Rehabilitation and Resettlement Policy

While looking at the rehabilitation policy there has never been a national policy on rehabilitation. The purpose of any rehabilitation and resettlement policy to ensure that the needs of the entire affected person’s are addressed so that they not only living but also improve upon it. Acquisition of land nearly 120 years administered by the Land Acquisition Act 1894 but it did not to address the issue of rehabilitation and resettlement raised out of development induced displacement. The displaced are only granted compensation for the land acquired was not enough to make good the loose of the displaced. This notion was transformed into reality through rehabilitation policies and packages in the context of projects like the

---

46 Supra note 19, at 1486-90.
47 Supra note 4, at 281.
48 Supra note 15, at 19.
Narmada Valley and Tehri Dam projects. Till the early 1950s, some Indian princely States had a fairly good rehabilitation policy. For example, when the Nizamsagar dam in Andra Pradesh was built in the 1930s, the then Nizam of Hydrabad decreed that all the peasants displaced by it should be resettled in a model township, be given land for land, and houses and other facilities according to modern principles.

But changes began in the 1960s. Initially the “land for land” policy remained, but not in the common area mainly dry land would be allotted, this too was changed in the 1960s. Land allotment would be only for those who desired for it, by the 1970 monetary compensation became the norm for the displaced persons. Probably till 1970, it was much easier for the State to evict a person from his land without paying any compensation or any type of rehabilitation.

5.9 Development of Rehabilitation and Resettlement Entitlements

Over the years, the position of the activists and also the formers about the acquisition of land has also undergone a radical change. In the beginning, the activists totally opposed any form of land acquisition. Then they were asking for monetary compensation and some form of proper rehabilitation. But today the farmers, the ousters of various projects and also the activists knowing the value of land, not only demands compensation in terms of money but also demanded jobs, some ownership in the land and share in company profits. A few states would introduce some positive changes in the 1970 and once again the accept the idea of “land for land” for the dam projects and only in two States (Maharashtra and Madhya Pradesh) have law on rehabilitation. It applies only to dams and may apply to the other schemes subject to the discretion of the State government. It does not apply to interstate project like Narmada valley. A limited policy of a land for land exists also in Orissa even in Maharashtra and Gujarat where the scheme is in existence its implementation is defective.

From 1967 a policy of job per family of displaced of industrial project is also in existence, but it is of limited use because those recently displaced, a large number of them are tribal, illiterate and are not prepared for a job in the formal sector. So,

52 Supra note 15, at 19.
54 Supra note 4, at 272-275.
55 Supra note 15, at 19.
most of them get only unskilled jobs, mainly of the daily wages or temporary variety. Moreover, land records are often in the name of dead ancestor several families may be claim the job and conflicts may arises, who is going to get the job? these are all the practical hurdles in the scheme.\textsuperscript{56} In the mid of 1980s a draft of a rehabilitation policy which would be applicable to all dam projects, industrial, mining and other development related projects was mooted for about two decades though draft policy was greatly debated and went through plenty of charges. However nothing is materialized in concrete.\textsuperscript{57}

In 1992, the government of India came up with a draft policy on rehabilitation and resettlement and went into a slumber for well over 14 years. History tells us the story that even the draft was a half-beaked attempt and no more than a tentative step, that too trigged by the insistence of World Bank. While, legislation at the national level was not even in contemplation, only three States in India (Maharashtra, Madhya Pradesh and Karnataka) had legislative enactment in place to give effect to the idea of the rehabilitation and resettlement. Eyeing the World Bank for the execution of the Upper Krishnan project the Karnataka government crafted the rehabilitation and resettlement law, never applied the law and gave an indecent burial to it. Even over time there has been increasing resistance to displacement by development projects on the part of the project affected people aided by NGOs and other activist organizations, mostly because of the inadequacy of rehabilitation and resettlement packages offered to them by the government. Such opposition has caused delay in construction of many project the government which can otherwise be expected to have an interest in the speedy completion of projects. The government’s behavior, in turn, reflects the absence of any obligation to provide adequate equated and appropriate resettlement and rehabilitation in the light of the circumstances, to have economically pragmatic as well as politically wise national policy on resettlement and rehabilitation of people displaced by development projects which defines the binding obligations of all State government in this field.\textsuperscript{58} What constitutes adequate and appropriate resettlement and rehabilitation of people displaced by development projects has been a subject to

\textsuperscript{56} \textit{Supra} note 15, at 20
\textsuperscript{58} \textit{Supra} note 3, at 1461.
considerable debate. Following are different principles that have been proposed as a possible basis for such policy.\textsuperscript{59}

**Case of National Policy:**

The case for a national policy is stronger than ever before, in view of the vast numbers already affected and the fact that these numbers can be expected to grow in future. Displacement caused by development projects disrupts the livelihood mechanisms of the poor and threatens them with greater impoverishment. The first argument for a national policy is the need to ensure a minimum standard of living for the displaced and to protect them from avoidable impoverishment. Another consideration which relates closely to the first is that of government accountability. A national policy is the basis according to which the government can be held accountable if satisfactory and timely resettlement and rehabilitation measures are not undertaken. It can create the necessary legal authority that is binding on the government, and help to ensure that the political will and commitment to undertake adequate and appropriate rehabilitation and rehabilitation are forthcoming.

In case of projects involving more than one state a third consideration is the need to avoid free riding on the part of individual states. For such projects each State has an incentive to seek a maximum share of the benefits while bearing as little as possible for the resettlement costs. For example in the case of Sarder Sarovar Dam on the Narmada river involving Gujarat Maharashtra and Madhya Pradesh, the State have haggled over there share of rehabilitation costs with little regard for the plight of ousters.

A fourth issue is that if project delays and cost overruns due to inadequate resettlement. Since independence, 205 irrigation projects undertaken, only 29 had been completed by 1979-80, and no project had been completed without minimum delay of 10 years. In India the resettlement and rehabilitation budget remarked by project authorities has typically been a very small percentage of total project costs. On the contrary, better rehabilitation and resettlement provisions may add to project benefits by reducing time and cost overruns and facilitating the smooth implementation of the project.\textsuperscript{60}

\textsuperscript{59} http://hdr/undp.org/cn/hymander (accessed on 25.05.2011).
\textsuperscript{60} Supra note 3, at 1461-62.
The scope of Land Acquisition Act, 1894 is very narrow and its provisions are grossly inadequate. Displacement is increasingly being understood as multi dimensional phenomenon, affecting people’s lives in their entirely encompassing and not only the economic but also the social and cultural spheres. A major amendment to the Act was made in 1984, according to which the government may acquire land for purpose of resettling those who have been displaced by the development projects. The solatium and interest paid on land were also increased to 30 percent and 12 percent respectively. This amendment indicates some recognition of the need for resettlement and rehabilitation to go beyond mere cash compensation. However, the amendment is only a enabling provision with no binding requirement of rehabilitation. Since, a major reason for displacement is land acquisition further land acquisition for rehabilitation and resettlement of displaced people is likely to cause further displacement and the amendment on the other hand has also made the acquisition of land easier.61

**Alternative approaches ; Land for Land:**

The principle of land acquisition is compensation not expropriation, hence, compensation is intervened with Land Acquisition Act 1894. Land for land has evolved as the major focus of most current policy proposals, combined with the broader understanding of the notion of project affected people. Land is a lifelong and inheritable livelihood producing asset and therefore, not comparable with one time cash payment that is inadequate. The land for land principle is particularly pertinent in the case of tribal areas. Where land rights may vest with the community rather than individuals, land markets are generally weak or non existent in such context and it is difficult to assign a value to land based on its market price. The absence of well defined private property rights in land also makes it difficult to decide who has a rightful claim to compensation. The land for land principle aside from its other advantages obviates these difficulties.62

**Cash for land:**

This is the principle of compensation on which land acquisition Act 1894 stands. According to this principle three factors have generally been important proper

---

61 *Supra* note 15, at 20.
62 *Supra* note 3, at 1461.
use of money: adequate compensation; help to the people in making prudent investment, and investment opportunities. As has been noted above, there is often undervaluation of land acquired and the sums paid on cash for land acquired are inadequate for people whose land have been acquired because they need to rehabilitate themselves on their own.\textsuperscript{63}

**Standard by living:**

The principle most generally involved with the regard to resettlement and rehabilitation of development displaced people and is compared with the pre-displacement situation. All project affected persons should have a similar or higher “standard of living”. This principle has broader thrust than the cash for land or the land for land principle of compensation. Those may even thought that while demanded for restoration of the pre-project standard of living has been general, the concept of standard living has been a subject of some debate and its actual content continues to be matter of serious argument. As emphasized by the World Bank policy on resettlement and rehabilitation standard of living is not only a matter of restoring incomes or replacing livelihoods but fulfillment of basic needs are important and the provision of public services (health, sanitation, water, electricity and educational facilities etc) should be significant component of rehabilitation packages aimed at restoring at least a minimum of standard of living. Indeed empirical studies suggest that the affected people consider the provision of public services important. Neither the cash for land principle nor the land for land principle pay adequate attention to the provision of such services.\textsuperscript{64}

**Bargaining approach:**

The central question with respect to resettlement and rehabilitation, is what constitutes ‘adequate and appropriate’ resettlement and rehabilitation, is to judge the adequate of resettlement measure? even the standard of living approach raised such issues. What constitutes the standard of living of displaced people has been resorted? Once the decision to construct a project is taken, project affected people compensation, resettlement and rehabilitation are determined in a ‘top to down’ manner by the policy makers without consulting them and without sufficient

\textsuperscript{63} Supra note 3, at 1464.
\textsuperscript{64} Supra note 12, at 19.
knowledge of their needs and interests. An alternative approach consist of seeking voluntary resettlement based on collective bargaining between displaced person and the State (or project authorities).\textsuperscript{65}

A simple version of bargaining approach involves giving displaced persons a right to refuse displacement, and leaving it to project authorities to put forward a rehabilitation package with displaced persons find acceptable. This is the most obvious way of giving displaced persons bargaining power that would make it possible for them to negotiate a substantial share of project benefits. This approach greatly facilitates the implementation of resettlement measures (once these measures have been agreed upon). The bargaining approach has received title attention, so for this approach effectively gives project affected persons a right to veto against the project, when the State or project authorities may not be willing to concede. Cost of this approach would be probably high, if project affected persons make a reasonable demands. But the feasibility of this approach should not be dismissed until it has been tested in practice. A draft Land Acquisition, Rehabilitation and Resettlement Bill, 1999 prepared after a series of consultations with people movements, academics and NGOs as a first step in this direction.\textsuperscript{66}

In attempting to suggest directions for policy regarding displacement and rehabilitation in India, we will examine among other the draft national policy, packages and guidelines for resettlement and retaliation (NRR 1998). Various draft policies have been under preparation by the government of India since the mid -1980s, but none of them ultimately saw the light of day. The latest draft NRR 1998 was prepared and widely debated by the government of India, including with people’s movements though it is reportedly still stalled at the level of the cabinet. But it has not received official sanction so far.\textsuperscript{67}

The NRR 1998 Policy

It must be compulsory obligation on the part of the project planning and implementation authorities to involve and consult the representatives of the affected communities, including women and members of disadvantaged groups, in all phases of planning, execution and monitoring of the rehabilitation and resettlement plan. It is

\textsuperscript{66} Supra note 19, at 1465-1466
\textsuperscript{67} NRR, 1998:125.
obligation on the government or project authority to take the information to the doorstep of the affected population so that even illiterate persons can acquire full knowledge of the plan for their resettlement.\textsuperscript{68}

The NRR policy 1998, states as its goal to endeavor to minimize the trauma of displacement on account of compulsory acquisition of land. But the problem is with the legal and institutional mechanism for the enforcement of these goals. In other words, for a policy to bite, it must have teeth. In India, as we have noted that only national law regarding displacement is the Land Acquisition Act 1894 (LAA), which places no legal obligation neither on the project authorities nor on State, beyond a limited conception of adequate ‘compensation’. Firstly, the narrow definition of ‘compensation’ in the Land Acquisition Act 1894 needs to be expended to incorporate elements of developmental rehabilitation. Further, this definition must be in the nature of a legal and enforceable obligation on project authorities towards those who are negatively affected by the project in various ways including host populations.

The displacement of project affected persons (PAPs) must be handled through a programme with minimum hardship and their resettlement must be treated as a part of the project itself. No developmental project can be justified if a section of society if pauperized by it, even less if these people to start with socially and economically weak. If people are uprooted alienated and turned into destitute, helpless and wondering in search of livelihood, then whatever principles of justice one may invoke or apply, the project must be seen to have failed.\textsuperscript{69}

\textbf{5.9.1 Rehabilitation and Resettlement Bill, 2002}

In the absence of a statutory rehabilitation law or even a national policy there is no legal imperative for State government or project authorities to integrate comprehensive rehabilitation planning into the part of a project. Indeed it has been found that even the existence of State and project specific policies is not sufficient to ensure this. Project authorizes are interested mainly in the relocation rather than rehabilitation of project affected persons, in their physical transference from the submergence zone rather than their long term welfare.

In fact, as we shall observe that it is only in the recent years chiefly under the impact of people’s movements, project authorities, State government and

\textsuperscript{68} NRR, 1998: 134-135.
\textsuperscript{69} NRR 1998: 127.
international funding agencies have accepted responsibility of rehabilitation. It extends beyond the payment of monetary compensation for expropriated individual assets and the provision of house sites. This neglect of rehabilitation assumes the gravest aspect when we seen in relation to older projects, particularly those concluded in the first three decades after independence. It must, however, be noticed that a lack of rehabilitation policy violates the right to life under Article 21 and right to equality under Article 14 (interpreted as right against arbitrariness’) of the Indian constitution.\textsuperscript{70}

Bill such as Rehabilitation and Resettlement Bill, 2002 and Land Acquisition (Amendment) Bill 2001 are being considered by the parliament and various committees. The effort which incorporated the obligation towards a social impact assessment have been failed due to lack of political will.\textsuperscript{71} Prevailing utilitarian mind set needs to be changed with the understanding that in a highly populated country such as India even the minority constitute a great number in itself. The row/seen argument of violability of certain rights goes against the socialist ideals possessed by the Indian political leaders, such as Nehru, “\textit{who viewed large scale development project to be temples of modern India}”. The displacement of the underprivileged few for construction of large scale development programmes.

Despite of having many positive aspects no Rehabilitation and Resettlement Policies will be passed, the subject gradually faded into oblivion, until 2003 when the draft National Rehabilitation policy was finally notified. This policy came into effect in February 2004 as the National policy on Rehabilitation and Resettlement for project affected families. However, because of its inadequacy in many aspects, the policy was severely criticized. The National Advisory Council (NAC), unsatisfied with this and sent its own revised policy draft to the government. The Government then brought out a version of the 2003 policy in the year 2006 which became the National Rehabilitation and Resettlement Policy, 2007.\textsuperscript{72}

\textsuperscript{70} The land mark case of \textit{Maneka Gandhi v. Union of India}, AIR 1979 SC 597 and subsequent cases have interpreted the Right to Life includes a life more than animal existence and included right to education, right to safe and healthy environment and a good quality of life.

\textsuperscript{71} \url{http://www.achrweb.org/review/2007163-07.html} (accessed on 04.05.2011)

\textsuperscript{72} See also India’s failed Rehabilitation Policy 2007 available \url{http://nhrc.nic/publications/IVHRCs Recommendations & Rehabilitation.pdf} (accessed on 27. 04.2011).
5.9.2 The National Rehabilitation and Resettlement Policy, 2007

The National Rehabilitation and Resettlement Policy, 2007 has come into force from 30th October 2007. To implement effectively the measures set out in the policy and to have institutional set up, the Government came out with the Rehabilitation and Resettlement Bill 2007. The new policy is applicable to all affected persons and families whose land, property or livelihood are adversely affected by land acquisition or by involuntary displacement of a permanent nature due to any other reason. They may be tenants, landless, the agricultural and non agricultural labourers, artisans, and others dependent on the land.

One of the objectives of the policy is to minimize the displacement of people and to promote non displacing or least displacing alternatives. It also recommends that only the minimum necessary area of land commensurate with the purpose of the project should be taken, and the use of agricultural land for non agricultural purposes should be kept to the minimum and multi crop land should be avoided and irrigated land should be kept to the minimum for such purposes. Projects may preferably be set up on wastelands or un-irrigated lands. Further the compensation award shall take into account the market value of the property being acquired, including the location wise minimum price per unit area (or to be fixed) by the respective State government or UT Administration. For the displaced, the policy provides for houses for even the landless, 20% of the compensation in the form of share in the proposed project which can go up to 50%. There is an additional provision of life time monthly pension too for vulnerable sections.

In case project involving land acquisition on behalf of requiring body, the disputes related to the compensation award for the land or other property acquired will be disposed of as per the provisions of the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force under which the acquisition of land is undertaken, and will be outside the purview of the functions of Ombudsman.
Key Strengths of 2003- National Resettlement and Rehabilitation (NPRR Policy on)\textsuperscript{73}

The NPRR contains a number of provisions that will help improve planning, implementation, and monitoring of involuntary resettlement in development projects. Key strengths of the policy include:

(i) Sound provisions related to consultations with project affected persons and disclosure of relevant information to them at various stages of resettlement planning;

(ii) Recognition of project affected persons without having legal rights also need to be assisted, although detailed provisions on how this would be put into practice are absent;

(iii) Treatment of adult sons and daughters as separate families (and therefore, eligible for economic rehabilitation), which is a significantly higher standard than donor resettlement policy requirements;

(iv) Provisions allowing for purchase of privately owned land through open-market transactions for the resettlement of project-affected people;

(v) Provisions clarifying that the cost of resettlement needs to be included in the project cost;

(vi) Recognition of the need to prepare resettlement plans that are disclosed to the project affected persons in draft form, and reviewed and approved by competent authorities; and

(vii) An attempt to define and set up an institutional framework, at the central and the State level, for planning, implementing, and monitoring resettlement.

Key features of National Rehabilitation and Resettlement Policy, 2007\textsuperscript{74} are :-

1. Consultation with the concerned Gram Sabha or the Panchayats at the appropriate level in the scheduled area under schedule V of the constitution in accordance with provisions of the Panchayats (Extension to Scheduled Area) Act, 1966. Each affected family of Schedule Tribe followed by Scheduled Caste shall be given allotment of land for land, if government land is available in the resettlement area.

\textsuperscript{73}http://www.lawyersclubindia.com/articles/rehabilitation-and-resettlement-of-displaced-person-due-to-d-1471.asp (accessed on 12.05.2014)

2. In case of land being acquired from the members of the Scheduled Tribes, at least one third of the compensation amount be paid at the outset as first installment and rest at the time of taking the possession of the land.

3. Additional one time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usage of forest procedure.

4. Scheduled Tribes to get free of cost for community and religious gathering, to the extent decided by appropriate government.

5. Scheduled Tribes affected families resettled out of district to get twenty five percent higher benefits in monetary terms.

6. Scheduled Tribes and Scheduled Castes affected families to be given fishing rights in the reservoir areas of irrigation or hydrol projects.

7. Scheduled Tribes and Scheduled Castes affected families enjoying reservation benefits in the affected areas shall be entitled to get the reservation benefits at the resettlement areas.

The National Rehabilitation and Resettlement Policy of 2007 fails to address the key issues relating to rehabilitation and resettlement and increases conflicts in forcible acquisition of lands. Rather, it upholds the sovereign power of the State apply the concept of eminent domain to forcible acquired any private property in any part of India in the name of ‘public purpose.’ Hence, it is better to say that the 2007 policy allows further displacement in the name of resettlement and rehabilitation in the project affected formalities.75

A person whose land or other means of livelihood are destroyed in the process of displacement is entitled to get just cash compensation under the Land Acquisition Act. This means that land, natural resources, means of livelihood, social and cultural loss resulting from displacement can be quantified and compensated in monetary terms. The people affected require more than just cash compensation. They ought to be prepared emotionally and psychologically to move out of their usual habitat, reducing the psychological trauma and anxiety created by wild rumors. The people affected are mostly those who give least value to monetary compensation or they do not know how to handle the cash. In such circumstances the compensation in kind and

75 Supra note 16, at 170.
even if in cash should be with an advice on proper investment or help in channelising the same.\textsuperscript{76}

Apart from loss of land, the villager suffers loss from common property resources, forest produce, village grazing land, community centre, social security and so. The problem is more actuate with the artisans. The assessment of compensation is made on the basis of the property owned by an individual, ignoring the fact that common properties also contribute to the living and livelihood in a society. The gender and class bias of the State is evident in any such case of huge of displacement; widows, unmarried daughter, and children are never considered as separate entity for the relief and rehabilitation purposes. Therefore, the general policy of compensation does not fit into the welfare schemes of the government founded on the principles of socialism. Lack of national policy and lacunas in the existing policy documents is a major problem. Apart from implementation is the serious problem. Because in most cases, there is a wide gap between the framed policies on paper and what get translated in reality.\textsuperscript{77} At this juncture, it would be useful to recall some differences between law and policy.

**Differences between Law and Policy.**

1. Statute law is enacted by parliament; policy is the creation of the executive.
2. Statute law, where it defines (or denies) rights is binding. Policy, on the other hand has at best persuasive value. Courts are bound by the statement in the law, but are free to be guided policy, or to ignore it.
3. The life of the statute begins on the date prescribed by parliament and stretches till either repealed, modified by a later statute, or struck down by a Court. Policy is not so constrained it may subside into non use, or become outdated, or be replaced by a later policy or even just be discarded.
4. Where there is a conflict between a statute and a policy, the latter yields to the former. There may be a difference between the effect of the law and stated intent of policy. Again it is not unknown for the law’s prescription to the restrictive where policy may be generous. To the extent that it is not in contradiction, policy may assist in the interpretation of a statue it cannot, however, replace the statute.

\textsuperscript{76} Supra note 16, at 195 & 196.
\textsuperscript{77} Supra note 16, at 196
5. Where the displacement is enabled by law and rehabilitation is sketched by policy, the inequality in the two instruments gives the compulsion of acquisition a status that rehabilitation does not possess. The difference that the law perceives between the rights of an owner or occupier and others affected by the displacement has been softened by policy. Yet it would need a change in the law to lend in enforceability.\footnote{India; Social Development Report 2008 pp. 34 & 35}

**State Policies**\footnote{http://www.lawyersclubindia.com/articles/rehabilitation-and-resettlement-of-displaced-person-due-to-d-1471.asp (accessed on 12.05.2014)}

**1. Maharashtra**

Maharashtra took the lead among Indian States in passing a law on resettlement rehabilitation in 1976. After the State High Court questioned some of its clauses, a commission was appointed to review the law. The Act was amended in 1986 but received the president’s assent only in 1989.

Well before the enactment, the State government accepted the need to rehabilitate displaced persons and declared the following policy intentions:

**The Shortcomings in the Act are:**

(i) Preparation of rehabilitation schemes is left entirely to the discretion of the Collector. He is not accountable to the affected people; and

(ii) No definite time limit is fixed for the completion of rehabilitation.

**2. Madhya Pradesh**

Madhya Pradesh passed a law in 1985 known as the Madhya Pradesh Pariyojna Ke Karan Visthapit Vyakti (Punarsthapan) Adhiniyam, 1985. It was enacted to “provide for the resettlement of certain persons displaced from lands which are acquired for irrigation projects, power projects or public utility projects and for matters connected therewith or incidental thereto.”

**The shortcomings and inconsistencies in the Act are:**

(i) The term “displaced person” has been defined as any tenure holder, tenant, government lessee, or owner of other property, who on account of the acquisition of his land or other property has been displaced from such property. There is no clarification as to the status of adult sons or daughters—to the risk of omission or deprivation of many affected people;
(ii) The provision of making forest land available (after deforestation) for cultivation violates the provision of the Forest Conservation Act, 1980 later amended in 1988. It prohibits the diversion of forest lands for non-forest use;
(iii) Section 17(2) of the Act provides for the compulsory acquisition of land for the purpose of resettlement, but subsequently in section 17(4), this is diluted by stating that excess land in the benefited zone in the command area of irrigation projects should be acquired as far as practicable; and
(iv) Section 18 provides that compensation for the land acquired will be paid according to the provisions of the Land Acquisition Act, 1894 and will be adjusted toward the market value of the land allotted to the ousted. This is against the interests of tribal ousted, who generally reside in remote areas and whose land has little market value.

3. Karnataka

The Karnataka Act was passed by the legislature in 1987, but received the president’s assent only 7 years later in 1994. The Act is known as Karnataka Resettlement of Project Displaced Persons Act, 1987. Some of the positive features of the Act are:
(i) Similar to the Maharashtra Act, it imposes obligations on the authorities to find avenues of employment for displaced people either at the project site or elsewhere; and
(ii) It provides for a detailed census of displaced people and assessment of the extent of land from which people are likely to be displaced. This clause is a distinct improvement over the Maharashtra Act, as the latter is silent on this score.

**Shortcomings of the Act are:**
(i) The State government has the sole discretion to decide on the application (through a Gazette notification) of the provisions of the enactment for resettling displaced people (DPs). No objective criteria exist to decide the issue;
(ii) It aims only at resettlement, not rehabilitation. The Act provides for payment of compensation, settling displaced people at a new site, finding a house plot, agricultural land, etc. However, the civic amenities to be provided are not clearly defined, other than the reservation of land for threshing and for cremation or burial. The Maharashtra Act provides a detailed list of civic amenities to be made available in the resettlement colony as a part of its rehabilitation package;
(iii) According to the provisions of the Act, there is no room for ensuring the involvement of APs, at any stage. The informed consent of the APs for their displacement and resettlement is not an issue of concern in the Act; and
(iv) The rehabilitation & resettlement activities are to be planned and implemented by the administration with practically no role for any other agency, including local bodies.

4. Orissa

Orissa has passed several government orders since 1977. Based on these, a policy was promulgated by the State government for displaced persons in the irrigation sector in 1994. This is known as the Orissa Resettlement and Rehabilitation of Project-Affected Persons Policy, 1994. The policy has been recently revised. Some of the positive features of the policy are:

(i) It provides for people’s participation, with the involvement of Aps (affected people), in mapping and designing the villages, resettlement sites, identification of the infrastructure required, development of common resources, etc.;
(ii) The sponsored resettlement colonies will be provided with civic amenities like schools, wells, village ponds, community centers, dispensaries, connecting roads, electrification, etc.; and
(iii) A booklet containing the salient features of the resettlement, not rehabilitation package, with a clear mention of the benefits and amenities, is to be prepared and distributed to the APs prior to the issue of identity cards.

The limitations of the policy are:

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

The purpose of any rehabilitation and resettlement policy is to ensure that the needs of all affected persons (APs) are addressed so that they not only regain their previous standard of living but also improve upon it. The adequacy of rehabilitation and resettlement policies can be judged through coverage of the issues listed below. It is the presence or absence of these factors, together with their scale, that determines the adequacy of the resettlement, not rehabilitation policy and the feasibility of planning and implementation of a successful rehabilitation not resettlement program. The factors are as follows:

i. Organizational responsibility for funding, planning, and implementation of good reestablishment solutions—all State, parastatal, national policies, and policies of World Bank (WB) and Asian Development Board (ADB) have this provision.

ii. Provision for a baseline socio-economic survey of APs, preparation of a resettlement plan, and availability of technical expertise in planning and cost assessment—all policies have this provision.

iii. Provision for active participation of APs in setting resettlement objectives, preparation of the resettlement plan by identifying sustainable income-generation activities, and implementation of the same—barring State policies (except Orissa), all policies have this provision.

iv. Provision for a sound, adequate, and accessible grievance redress mechanism leading to prompt and fair settlement of disputes—all policies have this provision. Provision for recognizing APs with various types of effect/ownership patterns of assets and entitlement of family members for rehabilitation and resettlement benefits—though support to non-titleholders is mentioned in the preamble to the NPRR (National Policy of Rehabilitation and Resettlement), it is absent from the main text. Except Orissa, none of the State policies supports non-titleholders. Among parastatal agencies, barring CIL, all others support non-titleholders.
5.10 Displaced persons Right of Rehabilitation and Resettlement

Compulsory acquisition of land for public purpose including infrastructure projects, displaces the people, forcing them to give up their home, assets and means of livelihood. Apart from depriving them of their lands, livelihood and displacement has other traumatic psychological and socio-cultural consequences as a result of this the LARR Bill has been labeled on the parliament. All stakeholders concerned with land acquisition, resettlement and rehabilitation projects are well aware of the National Resettlement and Rehabilitation Policy (NRRP) of 2007 and this policy was seen as a first step towards having a comprehensive approach to resettlement of project-affected persons, at the national level, though it never became an Act. Till the NRRP 2007, various States had their own policies or project-level resettlement polices where required. All international-funded projects by Asian Development Bank (ADB), World Bank, JBIC etc. have to follow the Involuntary Resettlement Policy of the concerned funding agencies, along with other policies/legislations in place of the country or State. The Ministry of Rural Development (MoRD) came out with the Draft National Land Acquisition and Resettlement and Rehabilitation Bill 2011 and it has a number of provisions, which were a part of the NRRP 2007. However, the 2001 Bill combines both land acquisition and rehabilitation and resettlement (R and R).  Again redrafted Bill placed before the Parliament on 29th Aug 2013 and it came out with the title the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. On Dec 26th 2013 it has received president assent and since January 1st 2014 it come into force.

The Act, is a milestone in the arena of land acquisition laws. The post colonial Land Acquisition Act 1894 governed the acquisition of land and thus, the existence of the power of eminent domain thereof. The Act states that it is aimed at rectifying the failings of archaic Land Acquisition Act 1894 on compulsory acquisition of land (private properties) hence, it has attained the most significance. The Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 aims to facilitate transfer of land from agricultural to other developmental activities while safeguarding the interest of the affected people. The Act closely follows the recommendations of the working group of the National

Advisory Council (NAC 2011). The most significant innovation in the Act, is the introduction of resettlement and rehabilitation as right and not as policy and wedded within the acquisition process of the Act itself. This is a significant departure from the past practices including the Rehabilitation and Resettlement Bill 2007 (separate legislative attempts) and various Rehabilitation and Resettlement policies which did not enjoy the status of legitimacy and more significantly, the enforcement capability.

As per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, rehabilitation and resettlement scheme has to be readied at the time of the notification itself and a separate Rehabilitation and Resettlement authority mechanism has been set up the overseas questions of rehabilitation and resettlement within the process. The Act specifies in detail, once the government issues a preliminary notification indicating its intention to acquire land, the rehabilitation and resettlement structure (including the Collector, the newly appointed Administrator, the Commissioner, issue of draft scheme, the award, timelines for the award and so on) starts operating parallel and significantly, there can be no change in land use unless rehabilitation and resettlement is complete with in full. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act envisages the setting up of a National Monitoring Committee and Land Acquisition, Rehabilitation and Resettlement Authority with full powers like a Civil Court to overseas disputes.

Both land acquisition and rehabilitation and resettlement provisions will apply when government acquires land for its own use, holding or control or for the purpose of transferring to private companies for public purpose including PPP projects but not highways (State and National) or on the request of private companies for immediate and declared use by such companies for public purposes. Rehabilitation and resettlement will apply even to private purchase the properties through private negotiations, once they cross the floor of 100 acres in rural areas or 50 acres in urban area. This trigger of 100/50 acres as the case may be seems to apply in all acquisitions irrespective of ‘public purpose’ requirement and eminent domain power. This will guide the companies staying below the trigger set in the Act. Using proxy acquisition methods (through other company or through joint venture so on) they can come out of this trigger, this will create tangled legal debate. The other option for private entities to stay out of the rehabilitation and resettlement requirements is to use the
other Acts for acquisition like SEZ Act, among others and possibly tweak relevant States laws and policies. The private companies will be unhappy about the Act, even for privately negotiated acquisitions rehabilitation and resettlement will be applied if they crossed the limit set out in the Act.

**Transparency Provisions**

(i) During social impact assessment, Gram Sabha has to be consulted and summary of SIA notified along with draft notification and the SIA document made available for public scrutiny

(ii) rehabilitation and Resettlement Scheme summary notified along with draft declaration to be made available for public scrutiny

(iii) Individual awards passed and

(iv) Public disclosure of all documents mandatorily to be made available in the public domain and on the website.

The other legislations would override the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, it clearly mentions that unless the Central Government specifies by notification (on applicability of compensation and rehabilitation and resettlement provisions), the Act, does not apply to many significant enactments pertaining to land acquisition and use, including, the following enactments:

(a) The Special Economic Zones Act, 2005
(b) The Cantonments Act, 2006
(c) The Land Acquisition (mines) Act, 1885
(d) The Metro Railways (construction of works) Act, 1978
(e) The National Highway’s Act, 1956
(f) The Petroleum and Minerals Pipelines Act, 1962
(g) Resettlement of Displaced persons (Land Acquisition) Act, 1948
(h) The Coal Bearing Areas Act, 2003
(i) The Electricity Act, 2003
(j) The Railways Act, 1989
(k) The Damodar Valley Corporation Act, 1948
(l) The Ancient Monuments and Archaeological sites and Remains Act, 1950

---

81 *Supra* note 80
However, where the land acquired is sold to a third party for a higher price, 40% of the appreciated land value or profit will be shared with the original owner. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, provide compensation to those who are dependent on the land for their livelihood. For rehabilitation and resettlement measure, definition of ‘affected family’ includes form labours, tenants, share croppers and warders in the areas for three years prior to the acquisition. Finally, Land Acquisition, Rehabilitation and Resettlement Authority will be established to implement the legislation.

Rehabilitation and Resettlement Entitlements

The rehabilitation and resettlement entitlements are given in Schedule II. These are:

For Land Owners:

1. Subsistence allowance: Rs 3,000/month/family for 12 months
2. Annuity: Rs. 2,000/month/family for 20 years, with appropriate index for inflation
3. Constructed house of plinth area: 150 sq.mt. of house site in rural areas or 50 sq.mt. plinth area in urban areas
4. 1 acre of land to each family in the command area, if land is acquired for an irrigation project
5. Rs. 50,000 for transportation
6. Land acquired for urbanisation: 20% of the developed land will be reserved and offered to land owners, in proportion to their land acquired and out of total compensation for the acquired land, it will be set-off.
7. Mandatory employment for one member per affected family or Rs 2 lakhs if employment is not offered
8. Offer of shares up to 25% of the compensation amount

For Livelihood Losers (including landless):

1. Subsistence allowance at Rs 3,000 per month per family for 12 months
2. Rs. 2,000 per month per family as annuity for 20 years, with appropriate index for inflation

---

82 Supra note 80
3. If homeless, a constructed house (plinth area) on 150 sq.mt. of house site in rural areas or 50 sq. mt. in urban area, provided free of cost
4. A one-time ‘Resettlement Allowance’ of Rs 50,000;
5. Rs. 50,000 for transportation
6. Mandatory employment for one member per affected family or Rs 2 lakhs

The funding agencies supporting the projects must assist the people whose livelihood is getting affected. However, for any project funded by the State Government, land is acquired under the present Act, rehabilitation and resettlement subsistence applied not only to the person having interest in the land even to the person affected by the project, having no title on the acquired land like agricultural labours.

5.11 Conclusion

The core idea of the right to property is a right to the thing itself not a right to the value of it. Therefore, compensation is not a replacement for property, it is only indemnification for the losses of the private owner. Hence, the right to property cannot be regarded as merely a right to compensation and it can not be said that a State has a power to take private property as long as it compensates the owner. Therefore in order to take private property there must be strong public necessity.

Land Acquisition Act, 1894 provides for payment of (only) cash compensation and (only) to those who have a direct interest in the title to such land. Thus, under the Act, the legal obligations of the project authorities do not go beyond monetary compensation to the land loser (a narrowly defined category of project affected persons). Over time, the Act has come under severe criticism, some directors even demanding that it be repealed. The Act was concerned and passed by a vastly different political regime with other priorities and interests. The developmental priorities of independent India is not the same as those of a colonial government with imperialist motivations. The Act deems fit the acquisition of land, and a regularly defined concept of ‘public purpose’ which has been used indiscriminately by the authorities. The Act by restricting monetary compensation for land ownership, forecloses taking account of the multiple dimensions of loss and dispossession that occur as a result of displacement, some of which are very difficult to quantity in monetary terms.
The provisions of the Land Acquisition Act, 1894 have been found to be grossly inadequate as its scope did not go beyond cash compensation to person who hold legal land titles, thereby excluding several other categories of losses and making ineligible for compensation who are genuinely project affected but without any formal land titles. Cash compensation appears to be clearly defective as a basis of resettlement policy. There is no obvious way of putting a ‘price’ on many of the losses experienced by displaced persons and experience also suggests that large cash payments tend to be poorly used by their beneficiaries.

Displacement is increasingly being understood as a multi-dimensional phenomenon affecting people’s lives in their entirety, encompassing not only the economic but also the social and cultural spheres, all of which feedback into each other. A major amendment to the Act was made in 1984, according to which the government could acquire land for purposes of resetting phase who have been displaced by development projects. The solatium and interest paid on land were also increased to 30 per cent and 12 per cent. per annum respectively. This amendment indicates some recognition of the need for resettlement and rehabilitation will actually be required depends on government authorities. Since a major reason for displacement is land acquisition, further land acquisition is likely to cause further displacement given that most available land is already occupied. The amendment on the other hand has also made the acquisition of land easier.

Rehabilitation and Resettlement is a protracted process. Once people are shifted they lose bargaining power. Sense of mutual obligation disappears amongst them. In the wider interest of the nation; the State has exercised its prerogative of eminent domain. In major projects governments have typically followed an incremental approach to the resettlement of displaced people. In that people were shifted and resettled according to construction and submergence schedule. Few State governments (Karnataka, Andhra Pradesh, Orissa) have rehabilitation and resettlement policies. Some like Karnataka do not appear to apply the policy. Haryana is the only State that has built an rehabilitation and resettlement policy into its land acquisition process.

Therefore, the Bill to amend the Land Acquisition Act, specifically make resettlement and rehabilitation of the displaced mandatory and to be internalized and integrated with the acquisition process. It must be noted that while the policy on
resettlement and rehabilitation in reality is not law, and hence, unenforceable on its own strength. No specific law exists to address the issue of rehabilitation and resettlement. A draft rehabilitation and resettlement bill – largely the consequences of the land related agitations of the last decade was introduce in parliament in 2007. Its passage through parliament, like the Land Acquisition Amendment Bill, has been delayed because of political considerations. If it is passed, it will be first step in the right direction. Its critics see the law as a whitewash; it does not give the State a mandate to act, but only suggests that it should do so. Its proponents see a law, however, flawed, as better than no law at all. The parliamentarians appear not to be in a hurry to take a call over this as this requires a far deeper and detailed deliberation. Even since the State first exercised its prerogative to acquire land for public and private developmental and industrial projects the issue of resettlement and rehabilitation of people and communities displaced by the projects has been a subject of great controversy. However, the political will to legislate to protect project affected people has been lacking till 2013.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force on 1st January 2014 which replaced the old Land Acquisition Act, 1894. It is an ambitious attempt by the Government to make the process of land acquisition fair and transparent and ensure resettlement and rehabilitation of families affected by land acquisition. Provisions of this Act was made to prevent the inhuman and social suffering caused by involuntary displacement by minimising the displacement of affected persons and mitigating the adverse impacts on people and their habitats. The idea is to ensure that project affected persons/families are provided with just compensation and rehabilitation and resettlement package. And that a participatory, informed, consultative and transparent process is put in place; and above all, in ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development. In this Act, it has been recognised that land acquisition and rehabilitation and resettlement need to be dealt with simultaneously. Rehabilitation and resettlement must always, in each instance, follow before acquisition of land. The new Act seeks to balance the need for facilitating land acquisition while addressing the concerns of farmers and other persons whose livelihood also depended on the land being acquired. The issue of who acquires land is less important than the
process of land acquisition, compensation for land acquired and the rehabilitation and resettlement process, package and conditions.