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**Land Acquisition Act in India: Impact on
environment and livelihood, 1824–2013**

Velayutham Saravanan

*Professor, Centre for Jawaharlal Nehru Studies,
Jamia Millia Islamia, New Delhi*



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Land Acquisition Act in India: Impact on environment and livelihood, 1824–2013*

Velayutham Saravanan

Abstract

Land acquisition for public purpose is not only a threat to the livelihood options of the farmers but also to the ecology and environment. Since the early nineteenth century, a separate act was enacted at the Presidency level to acquire land for public purposes. In the mid-nineteenth century, i.e., 1857, a common act was enacted for the country as a whole. Land Acquisition Act, 1894 was a comprehensive one which extensively used to acquire land for the various development activities. During the post-Independence period, several amendments were made in this act resulting in serious consequences on acquiring lands. This has become a sombre threat not only for farmer livelihood options but also to the ecologically and environmentally important common property resources. At the same time, there is no government policy for rehabilitation and resettlement of the displaced people. This has resulted in farmers having to forgo their assets without any alternative livelihood options. Precisely, this article argues how land acquisition policies affected the livelihood options of the farmers without appropriate rehabilitation and resettlement policies and how it has caused a threat to ecology and environment in a historical perspective for about two centuries, from early nineteenth century to early twenty-first century (1824–2013).

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The Problem

The state as an ‘Eminent Domain’ uses to acquire private land/property for the public purpose is in practice in different parts of the world, both in developed and developing countries for the last several centuries, particularly after the industrial revolution.¹ While taking over private property, the state used to pay compensation to the private property owners.² The origins of the term ‘Eminent Domain’ can be traced to the legal treatise written by the Dutch Jurist, Hugo Grotius in 1625, which says that

... the property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property.³

However, during the pre-colonial period, land was acquired for various public purposes viz., building roads, forts, palaces and public buildings, digging tanks and canals but did not pose any serious problems.⁴ Of course, these developmental activities were very limited during the pre-colonial era. Even the colonial government continued to follow the same policies. Indeed, developmental measures almost ‘non-existed’ during the East India Company regime, i.e., until mid-nineteenth century. ‘So long as the Company held real sway, the policy was strictly and narrowly commercial. Dividends were the paramount aim and end of government.’⁵ However, [t]he government of the East India Company had also acquired land for similar purposes,

¹ Sarkar, 2012, pp. 313–14.

² *Report of the Standing Committee on Rural Development, 2011–2012*, 2012, p. 9.

³ Quoted in the *Report of the Standing Committee on Rural Development, 2011–2012*, 2012, p. 9.

⁴ Sarkar, 2010, p. 104.

⁵ Smith, 1906, p. 340.

including for building ports and dockyards, but did not encounter major opposition'.⁶ Since the early nineteenth century, a separate act was enacted at the Presidency level to acquire the land resources for the public purposes mainly in the urban areas.

During the mid-nineteenth century, the British crown initiated various developmental activities such as establishment of railways, educational institutions and construction of dams in different parts of the country. Railway was included as a public utility only in 1850. Indeed, there was no provision to acquire the land for the private companies under the Bengal Regulation, hence in 1850 railway construction was included as a public purpose. For acquisition of land for public purpose, the government enacted 'Land for Public Purposes Act 1857' for the country as a whole. A comprehensive act for land acquisition was enacted in 1894 and the same act continues to be practiced till date. 'The exercise of the doctrine of Eminent Domain was limited to acquiring land for—public purpose such as roads, railways, canals, and social purposes—State-run schools and hospitals.'⁷ It is not necessary that all the acquisition has to be initiated by the government alone but also local authorities, societies registered under the societies registration act and co-operative societies can acquire land for developmental activities through the government. Further, this act also added the company but largely confined it only to railways, until the 1933 amendment. In other words, until 1933, the company meant only railways and not any other companies.⁸

The post-Independence government however did not make any substantial change in the land acquisition act till the last quarter of the twentieth century. 'In fact, the attitude of the Indian state towards the acquisition of the land of the poor in no way differed from that of the British.'⁹ Since then, the companies were encouraged to acquire the land by the government. 'Public sector and government projects were not the only purposes for which land was forcibly acquired by the

⁶ Sarkar, 2010, p. 104.

⁷ *Report of the Standing Committee on Rural Development, 2011–2012*, 2012, p. 10.

⁸ *Ibid*, p. 11.

⁹ Pinto, 1998, p. 3107.

state. Rather, states acquired land for private companies too on the pretext of public purpose in the interest of states.’¹⁰ To facilitate the interest of private companies, a Constitutional amendment was made in 1978. Until 1978, the constitutional provisions had restricted the power of the parliament and state legislature to enact the law for compulsory acquisition of property due to ‘(a) the compulsory acquisition of property must be for a public purpose; (b) that such acquisition must be by authority of law; (c) that such law must provide for compensation for the property so acquired; and (d) that the law must either fix the amount of the compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given.’¹¹ Until 1978, the property right was under ‘fundamental right’ and this was reduced to the status of ‘legal right’ under the 44th Amendment of the Constitution. Accordingly, ‘No person shall be deprived of his property save by authority of law.’ This amendment has two major implications: (i) any violation to property could be challenged only in High Courts and not directly in the Supreme Court and (ii) the government is no longer under any obligation to compensate persons whose land had been acquired. However, the amendments have made provisions to acquire the land for companies during the post-Independence period. ‘There has been a tendency in recent years by most project promoters to acquire land by using the eminent domain powers of the state, rather than through market negotiations.’¹² Consequently, ‘[t]here is a growing perception in India that these powers are frequently abused and that the compensation provided by the laws is inadequate’.¹³ Indeed, ‘[i]n most cases, compensation for land acquisition has been paid in cash, based on prices below the prevailing market prices’.¹⁴ The compensation amount was paid based on the registered sale value of the land. To avoid the high stamp duties, both buyers and sellers used to underreport the land sale transaction value. The registered value of the land was treated as a market value by the government while determining the award of

¹⁰ Ray and Patra, 2009, p. 42.

¹¹ Gae, 1973, p. 317.

¹² Morris and Pandey, 2009, p. 13.

¹³ Sarkar, 2009, p. 1.

¹⁴ Sinha, 1996, p. 1453.

compensation. Consequently, while acquiring the land for the public purpose the farmers are unable to get the actual compensation.

Since stamp duties are to be paid on all documents that are registered, high stamp duties have led the transacting parties to either avoid registration through various means including informal agreements or underreport the transaction value.¹⁵ Transaction taxes in land trade being as high as 15 per cent in many states limit the trade in land, and deals would be under-reported in value to avoid payment of high rates.¹⁶ However, in most areas where development projects are built, unlike in urban areas trade in land is infrequent.¹⁷ Numerous large dams, power plants, mines, and steel and heavy engineering plants came up on land acquired using the 1894 law, thus causing massive displacement of small farmers, agricultural labour, landless village workers, artisans, and forest dwellers. The issue became complicated when decisions had to be taken on paying the price for the land acquired.¹⁸

Even in the developed countries, 'land is purchased by such enterprises rather than acquired by the state'.¹⁹ In the developed countries such as the United States of America, Canada, European Union, Japan, Australia and China there is no provision for acquisition of land for private companies.²⁰ The Standing Committee on Rural Development (2012) observed that: 'It may be seen that in all developed democracies, private purchase of land, not State acquisition, is the norm. There is no provision in their laws for State acquisition of privately held land for profit-making private enterprises, nor, by extension, for public-private enterprises.'²¹ Whereas in the developing countries, particularly India 'public purpose is defined as to include

¹⁵ Morris and Pandey, 2009, p. 16.

¹⁶ Morris and Pandey, 2007, p. 2084.

¹⁷ Menezes, 1991, p. 2466.

¹⁸ Ray and Patra, 2009, p. 41.

¹⁹ *Report of the Standing Committee on Rural Development, 2011–2012*, 2012, p. 16.

²⁰ *Ibid*, pp. 11–12.

²¹ *Ibid*, p. 12.

virtually every form of enterprise, particularly after the amendments made in 1962 and 1984 in the LA 1894 Act.’²² ‘The government now started acquiring large tracts of land on behalf of private companies categorizing nearly every excuse for private activity as “public purpose” in order to invoke the Land Acquisition Act of 1894.’²³ ‘The public perception on land acquisition is generally negative when land is acquired by the government on behalf of the private sector, whose sole objective is seen to be profit maximization.’²⁴ ‘While the LAA, 1894 provides the principal framework for land acquisition in the country, the states have adopted it for application within their respective jurisdiction with amendments that they deem necessary.’²⁵

While acquiring land for the public purpose and company, the government has not made any commitments for the appropriate compensation and rehabilitation policies. Uniform rate of compensation and undervaluation of land was the major challenge while acquiring land for the railways from the mid-nineteenth century. ‘Most of the early problems relating to land acquisition for the railways were due to these two major irritants—uniform rate of compensation and undervaluation of land.’²⁶ Hence, the people protested against land acquisition mainly due to ‘... the uniform rate of compensation and the gross undervaluation of land.’²⁷ The same kinds of issues have continued even during the post-Independence period. A large number of displaced people have been left without any rehabilitation and resettlement resulting in livelihood threat. The following quotation clearly indicates the magnitude of the problems:

An official database of persons displaced / affected by projects is not available. However, some unofficial studies, particularly by Dr. Walter Fernandes, peg this figure at around 60 million for the period from 1947 to 2004, involving 25 million ha which includes 7 million ha of forest and 6 million ha of

²² Ibid.

²³ Ray and Patra, 2009, p. 43.

²⁴ Mohanty, 2009, p. 45.

²⁵ Upadhyay and Sinha, 2009, p. 51.

²⁶ Sarkar, 2010, p. 135.

²⁷ Ibid, p. 138.

other Common Property Resources (CPR). Whereas the tribals constitute 8.08% of the country's population, they are 40% of the total displaced/affected persons by the projects. Similarly at least 20% of the displaced /affected are Dalits and another 20% are OBCs. The resettlement record is also very dismal. Only a third of the displaced persons of planned development have been resettled.²⁸

However, it is to be pointed out that 16 acts had the provisions for the rehabilitation and resettlement since the late nineteenth century.²⁹

Until the mid-nineteenth century, land acquisition for public purposes acts were enacted at the Presidency level. From mid-nineteenth century common land acquisition act was enacted at the country level. Prior to the Land Acquisition Act, 1894, there were some Central Acts enacted for acquiring land for the specific development activities viz., telegraph, tramways and railways.³⁰ Even after enactment of the Land Acquisition Act, 1894, there were several other Central Acts which had the provisions for land acquisition for specific development activities viz., defence, electricity, forest, coal, etc.³¹ In addition to the Central Acts in general and specific acts in particular for land acquisition, states and native governments have enacted their own acts to acquire land for the public purposes not only at the state level but also at local municipal level.³² For the public purpose, land was acquired either with separate act³³ or under the Land Acquisition Act, 1894.³⁴ After the enactment of the Land Acquisition Act, 1894, different

²⁸ Planning Commission, 2008, p. 15.

²⁹ Land Acquisition, Rehabilitation and Resettlement Bill, 2011.

³⁰ *Report of the Law Commission on the Law of Acquisition and Requisitioning of Land, 1958.*

³¹ *Ibid.*

³² *Ibid.*

³³ The Works of Defence Act, 1903; Slum Areas (Improvement and Clearance) Act, 1956; the Atomic Energy Act, 1962.

³⁴ The Indian Telegraph Act, 1885; The Indian Railways Act, 1890; Indian Forest Act, 1927; The Damodar Valley Corporation Act, 1948; Road Transport Corporations Act, 1950; Delhi Development Act, 1957; The Ancient Monuments and Archaeological Sites and Remains Act, 1958.

provinces had adopted and amended the acts,³⁵ some of the Part B States enacted their own acts³⁶ and also separate acts were enacted by the Native States.³⁷ Though several provinces/states enacted their own acts based on the Land Acquisition Act, 1894, they continued to make amendments over the period of time.³⁸

An important concern—how the land acquisition for public purpose has emerged, how the public purpose concept itself has widened, how the compensation mechanism has been determined and how the rehabilitation and resettlement was made and why at all the problem has been aggravated—have to be captured from the legal point of view from the early nineteenth century to the present in a historical perspective. The other relevant questions are: whether the state is acquiring the private property only for public purpose or also for facilitating the profit-making private institutions and whether the state is paying the compensation based on the actual value of the property or a lower value. Why the state is invoking the land acquisition act for the profit-making institutions and why are they not buying on their own at market price? While acquiring the land for the public purpose, whether ecology and environmental consequences were considered or not. How the enactments were made in favour of government/companies at the cost of farmers and ecology and environment. Considering the above queries, this article attempts to analyse the background of the genesis of the act and its amendments over a period of time and its consequences on the property owners in terms of compensation and rehabilitation. Further, it also captures how the state has become an agent not only for the private companies but also for the real estate companies during the post-Independence period. In other words, the paper attempts to highlight the issues and problems of land acquisition for public purposes as well as for companies and other profit-making private institutions, and its due impact on property owners in terms of compensation, rehabilitation and negligence of the actual market value of the property and its consequences on ecology

³⁵ *Report of the Law Commission on the Law of Acquisition and Requisitioning of Land, 1958.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

and environment from the early period to till recent years. Precisely, this article attempts to analyse how the land acquisition policies have affected the livelihood options of the farmers without an appropriate compensation and rehabilitation measures and how it has had a caustic effect on the ecology and environment for about two centuries—from early nineteenth century to early twenty-first century, in a historical perspective (1824–2013).

This paper consists of ten sections. The second section gives a detailed background of the Land Acquisition Act (1824–1894). The third section deals with the features of the Land Acquisition Act, 1894. The fourth section briefs the amendments of Land Acquisition Act for both colonial and post-colonial period (1894–1984). The fifth section discusses about the provisions of companies act. The sixth section analyses the extent of land acquired and its impact on environment and livelihood options. The seventh section analyses the housing policies and emergence of real estate companies. The eighth section deals with the resettlement and rehabilitation policies. The ninth section analyses the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the last section ends with the concluding observations.

Background of the Land Acquisition Act

On the outset, the East India Company initiated the process of land acquisition in India for the various public purposes from the early nineteenth century. It was initially confined to the Presidency level and later on at the country as a whole. During the early nineteenth century, land acquisition occurred mainly in the urban areas and that too only to a limited extent. However, land acquisition for public purposes was very limited during the nineteenth century; hence the consequences were also limited.

The Bengal Regulation, 1824

The Bengal Regulation I of 1824 was the first legislation in India for acquisition of land and other immovable properties for public purposes. The Bengal Regulation is ‘a Regulation for enabling the officers of Government to obtain, at a fair valuation, land or other

immovable property required for roads, canals, or other public purposes'. This act facilitated the government to acquire land and other immovable properties for developing roads, canals and other public utilities. This act also made provisions for the payment of fair compensation of the land and other immovable properties.

Bombay Building Act, 1839

Based on the Bengal Regulation, the Bombay Presidency also enacted a separate act to acquire the land for the public purposes in the subsequent years. In 1839, 'Regulation of Buildings in the Islands of Bombay and Colaba' known as the Bombay Building Act (Act XXVIII) was enacted to acquire land for 'widening or altering any existing public road, street, or other thoroughfare or drain or for making any new public road, street or other thoroughfare within the islands of Bombay and Colaba'.³⁹

1850 Act

Under this act (*Act of XLII*), railway was pronounced as a public work. For the construction of railway network in different parts of the country, the need of a separate act was realized to acquire land in the mid-nineteenth century. 'The government could not transfer the land acquired for public works under the existing law (Regulation I of 1824), to a private company for the construction of railways. Nor could railway construction be referred to as public work.'⁴⁰ 'On 20 December 1850, an act was passed to address the legal aspects of the problem. It widened the scope of the term public work to include railway construction. The act also authorized the executive bodies to take possession of the land marked by the railway company for the centre line.'⁴¹ In 1850, it was pronounced that a railway was public works within the meaning of the Bengal Regulation I of 1824 to be used for acquiring land for the construction of railways.

³⁹ Bombay Building Act (Act XXVIII), 1839.

⁴⁰ Sarkar, 2010, p. 114.

⁴¹ Ibid, p. 115.



Madras Presidency Act, 1852

In the Madras Presidency, to facilitate acquiring land for the public purposes, 'The Acquisition of Land needed for Public Purposes in the Presidency of Fort St. George' (Act XX of 1852) was enacted on 27 March 1852. According to this act: 'whenever it shall appear to the Governor of Fort St. George in Council that any land is needed for a public purpose, he shall make a declaration to that effect in a Minute of Council, and such declaration shall be conclusive evidence that the purpose for which the land is needed is a public purpose'.⁴² Indeed, this act largely adopted the Bengal Regulation I of 1824.

Land for Public Purposes Act, 1857

Land for Public Purposes Act, 1857 was the first act enacted for the acquisition of land for public purposes for the country as a whole. This act repealed all previous enactments of different Presidencies relating to acquisition of land for public purposes. Land for Public Purposes Act, 1857 was enacted with incorporation of various acts/codes practised in different Presidencies/regions of the subcontinent (Section 1). According to this act, the Secretary to the Government or any authorized officer may take any land for a public purpose by declaration (Section 2). After the declaration, the government will direct the Collector or concerned officer to acquire the land (Section 3). After taking over the land, the Collector has to mark out the area, conduct the survey and prepare the plan. Then the Collector has to serve notices to the public, occupier and interested party of the declared property. In the notice, he has to mention about the proposed time and place, not less than 15 days after the date of publication of notice for meeting with the interested party or their agents (Section 4). Subsequently, the Collector has to fix the date of enquiry with the interested person/party to estimate the value of land and the amount of compensation to be awarded. Once the interested party accepts the proposal, the Collector will award the compensation that is conclusive (Section 5). If the compensation is not paid at the time of possession, then the Collector has to pay the amount along with interest

⁴² Madras Presidency Act XX of 1852.

at the rate of 6% per annum from the time of notice (Section 27). In case, the interested party did not attend the meeting or the Collector could not agree with the interested person's demand, the matter will be referred to the arbitrator (Section 6). After the award is referred to the arbitrator, the Collector may take over immediate possession (Section 8). If there is any opposition to take over possession of land by the Collector, he has to apply to Magistrate to enforce the surrender of the land (Section 9). If the amount of compensation was referred to the arbitrator with the written consent of persons interested the Collector may ask the arbitrators to determine the proportion of the award for every one (Section 14). This act laid the foundations for the Land Acquisition Act, 1894 such as declaration, acquisition, survey and issue of notices to the public, award of compensation and reference to the arbitrator if any disputes arise.

The Land for Public Purposes (Amendment) Act, 1861

The 1857 Act assumed that there may arise difficulties for acquisition of land by the Collector or concerned officer after the declaration (Section 3). Within a short span of time, the government realized that it was not that easy to acquire the land even after the declaration. It was felt that the requirement of Commissioner of Police force is required due to protest from the landowners. Hence, in 1861, the Land for Public Purposes (Amendment) Act, 1861 was amended stating that the Collector or other officer has to apply to the Commissioner of Police to enforce the surrender of the land (Section 2).

The Land for Public Purposes (Amendment) Act, 1863

This amendment was made to engage the private persons and companies to carry out the public works. It facilitates the private persons and companies to construct the activities in the land acquired for public purposes and it also made provisions for regulating the construction and use of works. A few years experience of the working of the Land for Public Purposes Act, 1857 revealed that the method of settlement of compensation by arbitration was unsatisfactory and there was no provision for appeal against the award of the arbitrators. To overcome these drawbacks, Land Acquisition Act, 1870 was enacted.

The Land Acquisition Act, 1870

The Land Acquisition Act, 1870 was enforced on 1 June 1870 and it was extended to the whole of India. According to this act, the local government can acquire land in any locality for public purpose by issuing a notification to be published in the local gazette and also displayed in the locality. After the notification, the government can undertake the survey, set out boundaries and clear any standing crop, fence on jungle of the acquired land. However, the government cannot enter into any building or in any enclosed court or garden attached to a dwelling house without giving a notice at least seven days in advance (Section 4). While taking over the land, the government has to pay for all necessary damage to the property. In case any dispute arises regarding the amount, the concerned officer refers the matter to the Collector and his decision is final (Section 5). In case of emergency, 15 days after the publication of notice by the Collector, possession of any waste or arable land needed for public purpose or for a company, which is free from all encumbrances, can be taken (Section 17).

For public purpose or for a company, land can be acquired by the local government and that declaration should be issued under the signature of the Secretary of the Government or authorized officers. However, no such declaration shall be made by the government unless it assures the compensation amount to be paid out of public revenue, municipal fund or by a company. The declaration has to be published in the local official gazette which consists of the name of the district or other territorial division, the purpose for which the land is required, approximate area of land, plan of the land and its place of availability. The said declaration would be conclusive evidence for the requirement of land for a public purpose or for a company (Section 6). After the declaration, the local government has to direct the Collector to take an order for the acquisition of land (Section 7). The Collector has to issue a public notice at convenient places. The notice must state that the government intends to take possession of land and that the claims of compensation for all interests in such land may be made to the Collector. Further, the notice also should provide the particulars of land and all persons interested in the land to appear in person or agents before the Collector at a particular time and place. The Collector also has to send the notice individually to the occupiers (Section 9).

At the meeting, the Collector has to enquire about the value of land and expected compensation amount with the interested persons and to inform the compensation that will be paid (Section 11). If no claimants attend the meeting or if the Collector is unable to agree with persons interested and conflicts arise regarding title, rights and claims on the property the Collector may refer the matter to the court (Section 15). After referring to the court decision, the Collector may take possession of the land which is absolutely government property and free from all encumbrances (Section 16). While determining the amount of compensation, the Collector has to take consideration of the market value, damages of the property, his earnings and change of his residence. If the Collector and persons interested agree to the compensation amount in the presence of a witness, award will be made by the Collector (Section 14). In addition to the actual compensation amount, the Collector has to consider payment of compensation of 15% of the market value for compulsory acquisition of the property (Section 42). If the compensation is not paid at the time of possession, the amount has to be paid with a 6% interest rate.

For acquisition of land for companies, the company has to get the consent of the government and also execute the agreement (Section 47). Then the local government may authorize any officer of the company to exercise the preliminary investigations for acquisition of land (Section 46). The government has to satisfy itself that the land is required for construction work and that it would be useful for the public before it gives consent for the proposal (Section 48). The agreement has to be published in the Gazette of India and also the local official gazette (Section 50). The importance of this act is that it has laid down a detailed procedure for acquisition of land and also provided definite rules for the determination of compensation amount and also made provision to a civil court for the determining the amount of compensation. The 1870 Act made provisions for acquisition of land for the companies that would be useful for the public and listed the detailed procedures to be followed. In a nutshell, prior to the Land Acquisition Act, 1894, a prelude of acts laid down the procedures to acquire land, determination of compensation and appeal for the compensation and also made provisions for the emergency clauses to acquire the land.

Features of Land Acquisition Act, 1894

The Land Acquisition Act, 1894 came into force on 1 March, 1894. This act was extended to whole of India except the Part 'B' States viz., Hyderabad, Jammu & Kashmir, Madhya Bharat, Mysore, Patiala, Rajasthan, Saurashtra and Travancore-Cochin. At the initial stage, if the government felt that the land is needed or likely to be needed for any public purpose,⁴³ a notification has to be published in the official gazette and the Collector has to display public notice containing the substance of notification at the public place. Subsequently, the notified land has to be taken over by the government. While taking over the land, the officer has to pay for the damages. In case of dispute regarding payment for damages, the concerned officer has to refer to the decision of the Collector or other Chief Revenue Officer (Section 5).

Once the government ensures the sources of compensation amount for the land to be paid by a company or public revenue or local authority, a declaration shall be made under the signature of a Secretary to the Government or authorized officer (Section 6). The declaration should consist of location of land in the district or other territorial division, the purpose for which it is needed, its approximate area, a plan of the land and the place where such a plan may be inspected. There should be conclusive evidence that the land is needed for a public purpose or for a company (Section 6). After the declaration, the government shall direct the Collector to take orders for the acquisition of the land (Section 7). The Collector has to display notices at convenient places on or near the land to be taken, stating that the government intends to take possession of the land, and that claims to compensation for all interest in such land may be made to him. The notice should consist of the

⁴³ This act also has not defined the term public purpose. However, Pinto claims: 'In the 1894 bill, public purpose included the provision of village sites or the extension, planned development or improvement of existing village sites, land for town or rural planning, land for a corporation owned or controlled by the state, and for residential purposes to the poor landless or persons residing in areas affected by natural calamities, land for carrying out any educational, housing, health or slum clearance scheme sponsored by government and premises or building for locating a public office' (Pinto, 1998, p. 3109).

particulars of land and all persons interested in the land to appear personally before the Collector at a specified time and place (Section 9).

For emergency purposes, the government can direct the Collector to acquire the land after expiration of 15 days of notification and to take possession of any waste or arable land needed for public purposes or for a company, which is absolutely free from all encumbrances. However, at the time of taking possession of the land the Collector has to pay compensation for the standing crops and trees (Section 17).

If the award of compensation is not acceptable, the person interested has to submit an application to the Collector requesting that the matter to be referred to the court for determination of award. In that application the grounds on which the person interested wants to refer to the court has to be mentioned explicitly. If the person has already represented to the Collector he has to write to the Collector within six weeks from the date of the Collector's award. In other cases, the representation has to be made within six weeks of the receipt of the notice from the Collector or within six months from the date of the Collector's award, whichever period shall first expire (Section 18). While determining the amount of compensation, the court has to take consideration of market value, damages to the property, his earnings and change of his residence. If the Collector and persons interested agree to the compensation amount in the presence of a witness, the award will be made by the Collector (Section 23). In addition to the actual compensation amount, the Collector has to consider payment of compensation of 15% of the market value for compulsory acquisition of the property (Section 23). If the compensation is not paid at the time of possession, the amount has to be paid with 6% interest.

For acquisition of land by companies, the company has to get the consent of the government and also execute an agreement (Section 39). Then the local government may authorize any officer of the company to exercise the preliminary investigations for acquisition of land (Section 38). The government has to be satisfied with the company's proposal that there is a need for construction work that would be useful for the



public before giving its consent (Section 40). The agreement has to be published in the Gazette of India and also local official gazette (Section 42). Precisely, the Land Acquisition Act, 1894 laid down the comprehensive procedures to acquire land for the public purposes viz., (i) preliminary notification (Section 4); (ii) declaration of notification (Section 6); (iii) notice to persons interested (Section 9); (iv) enquiry and award (Section 11); and (v) possession (Section 16).

Amendments in Land Acquisition Act, 1894

Though the land acquisition act enacted was based on the various acts at the Presidency level as well as the country level from the early nineteenth century, it has undergone several amendments both during the colonial and post-colonial periods. ‘So far, the Act has been amended 17 times. Various sections of the Act have also been amended from time to time by the State Governments to meet their specific requirements.’⁴⁴ The amendments are as follows for both colonial and post-colonial periods.

Colonial period

The Land Acquisition Act, 1894 has undergone several amendments during the colonial period, i.e., Act 9 of 1910, Act 4 of 1914, Act 10 of 1914, Act 17 of 1919, Act 38 of 1920, Act 19 of 1921, Act 38 of 1923, Act 16 of 1933 and adapted and modified by the Government of India (Adaptation of Indian Laws) Order, 1937.

The Indian Electricity Act, 1910

The Indian Electricity Act, 1910, has made a major amendment in the Land Acquisition Act, 1894. This act made provisions to acquire land by individuals at the state level with the same conditions as that for companies. The Indian Electricity Act, 1910 has made a provision to facilitate the individuals to acquire land for their undertakings at the

⁴⁴ *Report of the Standing Committee on Rural Development, 2011–2012, 2012, p. 1.*

state level. This is a first instance to engage the individuals to acquire land to develop their undertakings.

Land Acquisition (Amendment) Act, 1921

This act has made provisions in the 'forms of award' as well as to appeal in the Supreme Court based on the Code of Civil Procedure, 1908. In Section 26 'forms of award' the following sub-section (26[2]) was inserted: 'Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgement within the meaning of Section 2, Clause (2) and Clause (9) respectively of the Code of Civil Procedure, 1908 (5 of 1908)'. Under Section 54, a clause was inserted to facilitate the provisions to appeal in the Supreme Court regarding the compensation.

Land Acquisition (Amendment) Act, 1923

As per the original act, there is no provision to object the acquisition but only provision to pay for damages. The Land Acquisition (Amendment) Act, 1923 has made provisions to object to the notification and also after hearing the objection by the Collector, he has to forward the same for the final decision of the government. The amendment has provided opportunities for the landowners to present their viewpoint. At the same time, this amendment also made a provision to acquire the land on an emergency basis, for which there is no need to get the viewpoint of the land owners. Further, this amendment also provided for consent from the government based on the report. Under Sections 40 and 41, there was an amendment to provide for more clarity on giving consent by the government either based on the report of the Collector or on the report of the officer making an inquiry. This amendment, on the one hand provided an opportunity to the owner to make objections at the time of notification and on the other hand it also introduced the emergency provision which facilitates 'no hearing' objections options. However, this amendment seeks a detailed report by the government before giving consent for the acquisition.

Land Acquisition (Amendment) Act, 1933

This amendment was made largely to facilitate the industries and residential purposes for the industrial workers viz., the company is authorized to survey and construct dwelling houses for workers. It held to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision to build amenities. Further, it also emphasized that the work should be completed within the stipulated time and it also insisted on maintenance to use the public purpose.

Over 50 years of colonial period, there were several amendments in the act such as facility to raise objections against the notification and to appeal in the Supreme Court for the award of compensation. Other amendments introduced were emergency provisions, provisions for a detailed report by the government before giving consent for the acquisition of land and the provisions for the industries and residential purposes for the industrial workers.

Post-colonial period

In the post-Independence period, the government made several amendments viz., Land Acquisition (Amendment) Act, 1962; Land Acquisition (Amendment and Validation) Act, 1967 and The Land Acquisition (Amendment) Act, 1984. Indeed, the post-Independence government continued to follow the same act without any substantial changes in the provisions of the act for about one-and-a-half decades. However, minor changes were made based on the Adoption of Acts and Ordinance Order, 1948. This order made provisions to replace the words ‘all the Provinces of India’ instead of ‘the whole of British India’. Then, in 1950 under the Adaptation of Laws Order, 1950 for the words ‘the Provinces of India’ the following words—‘the whole of India except Part B States’—were replaced. In 1956, under the Adaptation of Laws (No. 2) Order, 1956 for the words ‘except Part B States’ the following words—‘all the territories which immediately before the 1 November, 1956 were comprised in Part B States’—were substituted. Precisely, only a few words were replaced under the adoption order during the first decades of independence. In 1956,

the seventh meeting of the Statute Revision Section of the Law Commission decided to take up the revision of the Land Acquisition Act, 1894. In 1958, *The Report of the Law Commission on the Law of Acquisition and Requisitioning of Land* was submitted. The Law Commission suggested several improvements but they were not implemented. In addition to this, the following amendments were made during the post-independence period.

Land Acquisition (Amendment) Act, 1962

This amendment was made largely to acquire land not only for the companies but also for the associated activities of the companies. To facilitate completion of the building or work for a company within the stipulated time, additional provisions were made to engage the companies. Unless or otherwise stated, there is a previous agreement with the companies by the government that sale, mortgage, gift or lease cannot be entertained. Further, this amendment was also restricted to the private companies, acquisition of land for the erection of dwelling-houses for workmen employed by the company or for the provision of amenities directly connected with that of the companies. Further, this amendment stated that land not to be acquired for private companies other than government companies such as the railways. This amendment also made provisions to make the new rules and also listed the procedures for that. Further, under this amendment, validation of certain actuations provisos was inserted. Accordingly, except any judgement, decree per order of any court, every actuation of land for a company made or purporting to have been made before the 20 July 1962, every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid.

Land Acquisition (Amendment and Validation) Act, 1967

In Section 6, 'Declaration that land is required for a public purpose', sub-section (1) the following proviso was inserted under this amendment: 'and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (I) irrespective of whether

one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)'

The Land Acquisition (Amendment) Act, 1984

The amendments made in 1984 in the Land Acquisition Act, 1894 made no differentiation between acquisition for a state purpose and acquisition for a private enterprise or state enterprise by amending Section 4 of the original act to insert the words 'or for a company' after 'any public purpose'. The courts have interpreted this amendment to mean that any notification of acquisition issued under Section 4 need not specify whether the acquisition is for a public purpose or for a company. This opened the floodgates to acquisition of land by the state for companies. And this in turn has unleashed the tribal and rural backlash that has caused the current decision of the government to replace the 1894 Act with an altogether new Act.⁴⁵

The Land Acquisition (Amendment) Act, 1984 has made several major amendments viz., definition for the 'corporation owned or controlled by the state' and for 'public purpose', additional provisions for the award of the Collector, timeframe to make an award, provisions for the correction of errors, power to call for records, special powers in cases of urgency, matters to be considered in determining compensation, re-determination of the amount of compensation on the basis of the award of the court and payment of interest. To facilitate the above, additional provisions were initiated at the section and clause level.

This amendment has made detailed definitions for the 'corporation owned or controlled by the state' and for 'public purpose'. In Section 3, 'Definition' after clause (c) the following clause (cc) 'Corporation owned or controlled by the state' was inserted, and also for 'public purpose' a detailed explanation was incorporated. This amendment gave additional powers for the Collector to make a decision on award and additional provisions for the timeframe for the award with the said amount. If the persons interested in the land made any demand in writing

⁴⁵ *Report of the Standing Committee on Rural Development.*

collectively to the Collector and he is satisfied without any enquiry he can award the land. The determination of compensation for any land shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere. The amendment was made to deliver the award within a period of two years from the date of the publication of the declaration and if not, the entire proceeding for the acquisition of the land shall lapse. Further, provisions were empowered to the Collector to correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority within six months of award. The government was empowered to call for records of any proceedings and/or orders of the Collector to ensure the legality or propriety of any findings before the award was made by the Collector. At the same time, the government should not pass any order or direction without hearing the viewpoint of the concerned persons. In cases of urgency, special power was empowered to the Collector to pay 80% of compensation for the land, based on his own estimation. Except on account of any stay or injunction by the order of any court, the Court can award 12% of the compensation in addition to the market value for the period of commencing on and from the date of the publication of the notification, whichever is earlier. If the compensation paid is in excess, the Collector can ask for refund of the excess amount by applying to the court within one year period of time and if it exceeds more than one year an interest of 15% can be claimed from the beneficiaries. A provision was made for 'Re-determination of the amount of compensation on the basis of the award of the Court'. Accordingly, if the court allows the applicant any amount of compensation in excess of the amount awarded by the Collector, the persons interested and those who are also aggrieved by the award of the Collector, those who had not made an application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court. To ensure the payment of compensation on time, a provision was inserted 'Payment of interest' the interest rate was increased to 9% and if the compensation was not paid or deposited within a period of one year from the date on which possession is taken 15% interest was to be paid. The provision of 'Company may be authorized to enter and survey' to acquire land for its requirements was omitted.



The amendments in the act during the post-Independence period has facilitated in four aspects viz., definitions, companies, compensation with interest and additional powers to the Collector. The amendment in the definition has widened the scope of public purpose to accommodate the various components. This amendment was facilitated to acquire the land not only for the companies but also for the associated activities of the companies. Further, additional provisions for the award of compensation, timeframe to make an award and its interest rate were provided. These amendments also provided additional powers to the Collector with special powers in the cases of urgency. Precisely, the amendments in the land acquisition act during the post-Independence period has provided a wider scope to acquire land for a public purpose, for companies with a timeframe for the compensation and additional powers to the Collector.

Amendments at the State Level

Under the Constitution, the states can make their own laws to acquire land for public purposes. Hence, different states have enacted several acts for acquiring land for different public purposes. The procedures followed in several acts to acquire land are different. Like the Central acts, different states' acts also have undergone several amendments both during the colonial and post-colonial periods. Various sections of the act have also been amended from time to time by the state governments to meet their specific requirements. The amendments are largely procedural in nature with little or no substantive changes.⁴⁶ The amendments are largely confined to the following aspects: preliminary notification, survey before initial notification, public purpose, and criteria for determining market value, compensation rights for cultivators, reference to court and compensation in the case of dispute.⁴⁷

Land Acquisition for Companies

Until mid-nineteenth century, land acquisitions for public purposes did not include companies. In 1850, the Bengal Provisions widened

⁴⁶ Upadhyay and Sinha, 2009, p. 60.

⁴⁷ Upadhyay and Sinha, 2009, pp. 51–52.

the scope of the term public work to include railway construction. In the subsequent acts, company mainly referred to railway companies. Companies Act of 1866 was the first comprehensive act enacted in India. Acquisition of land for companies is not of a recent origin and the practices existed or were recognized under the Land Acquisition Act, 1850 onwards. In the land acquisition act, several provisions were made to acquire land for the companies during the colonial and post-colonial period. In addition to that there were separate rules for the acquisition of land for the companies.

Land Acquisition (Companies) Rules, 1963

To acquire land for companies under the Land Acquisition Act, 1894, the Central Government has made rules for the guidance of the state government and the officer of Central and state governments. These rules are known as the 'Land Acquisition (Companies) Rules, 1963'. Under these rules, a 'Land Acquisition Committee' has to be appointed to advise the government on all matters relating to or arising out of acquisition of land within a month. The committee term may be extended but it should not exceed more than two months subject to the request of the committee who must provide sufficient reasons.

Whenever a company makes in application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters namely:

- (i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;
- (ii) that the company has made all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable price and such efforts have failed;
- (iii) that the land proposed to be acquired is suitable for the purpose;
- (iv) that the area of land proposed to be acquired is not excessive;
- (v) that the company is in a position to utilize the land expeditiously; and

- (vi) where the land proposed to be acquired is good agricultural land that no alternative suitable site can be found so as to avoid acquisition of that land.

(<http://www.nlsenlaw.org/wp-content/uploads/2013/08/LAnd-Acquisition-Companies-Rules.pdf>)

While holding an enquiry with the company, the Collector has to consult the senior agricultural officer to get information about the following details of proposed land by the company: whether the proposed land by the company is good for agriculture or not, whether the approximate amount of compensation is likely to be paid to the land shall be acquired from the company or not, whether the company offered a reasonable price as compensation for the land or not. At the same time, the Collector has to give reasonable opportunity to hear the viewpoints of the person interested. Soon after holding the enquiry, the Collector has to submit the report to the appropriate government and a copy of the same has to be forwarded by that government to the Committee. After consulting the committee and referring other reports and execution of agreement, the appropriate government shall make a declaration. Precisely, these rules framed the procedures in favour of the companies while they also considered the compensation and rehabilitation, though to a very limited extent.

Extent of Land Acquired and Its Impact on Environment and Livelihood

Land acquisition for the public purpose threatened not only the private landowners' livelihood but also the ecology and environment since the early nineteenth century, particularly during the post-Independence period onwards.

Extent of land acquired under the Act

Since Independence, land resources have been acquired for public purposes. The land resources can be broadly classified into two categories, viz., private property and common property resources. Acquisition of land for public purposes affects the role of private property as well as the environment by alienating the forest and other common property resources.

Studies show that around 25 million hectares have been acquired during 1947–2000 through it, more than half of it is community-owned. Much more land is being taken over after liberalisation for private profit. The policy on the SEZs stipulates that only half of the land they get has to be built up. The rest can be used for real estate speculation at a high profit. People's displacement is the consequence of such 'national development'.⁴⁸ Large infrastructure projects, including dams, ports and mining, environmental conservation projects, and designation of large areas as tax-free Special Economic Zones (SEZs), have been responsible for the displacement of millions of rural families, most of whom have not received rehabilitation'.⁴⁹

According to *Human Rights Status Report 2012*:

Not taking into account displacement due to armed and ethnic conflict, India is estimated to have the highest number of people displaced annually as a result of ostensible 'development' projects. Independent experts estimate that the number of those displaced by such projects since India's independence (1947) stands between 60 and 65 million. This amounts to around one million displaced every year since independence. Of these displaced, over 40% are tribals and another 40% consist of Dalits and other rural poor. The vast majority of the displaced have not received adequate resettlement.⁵⁰

It shows that a large extent of land was acquired for various development activities and a huge number of people, largely belonging to the weaker sections, were displaced.

Trends of acquired land in different states

It is not only that a few states have this problem, invariably almost all the states have the same problem. For instance, 'in Assam, 19 lakh persons were deprived of their livelihood in the name of development

⁴⁸ Fernandes, 2011.

⁴⁹ Working Group on Human Rights in India and the UN, 2012, p. 7.

⁵⁰ Ibid., p. 4.



during 1947–2000, more than half of them were tribals. In West Bengal they exceed 70 lakh. Most of them were poor and have been impoverished further and deprived of their culture and identity that is linked to their land and livelihood'.⁵¹

For example, by official count Assam used 3.9 lakh acres for development projects in the period 1947–2000 and displaced 4.2 lakh persons. The reality is 19.1 lakhs were displaced from 14.1 lakh acres of land. The 15 lakh persons “evicted” from 10 lakh acres do not exist. Tripura changed its land laws in 1960 to recognize only individual land and alienate the tribal community land. The tribes immediately lost 80,000 acres of their land because of it, 32,000 acres more to the Dumbur dam in the 1970s and over 60,000 acres for other projects. That displaced over 1 lakh people and resulted in tribal insurgency. Meghalaya has displaced some 1,10,000 tribals from common land without rehabilitation. Similar is the fate of the 1,50,000 tribals displaced in Mizoram.⁵²

In Jharkhand, the development-induced displacement from 1950–1990, affected 74 lakh tribal population, of which only 18.45 lakh (25%) have been resettled.⁵³ Invariably, a large number of people have been displaced due to the various development programmes in different states.

Impact on Environment

Forest resources are one of the major causalities while acquiring land for the various development/public purposes, particularly during the post-Independence period. In other words, a large extent of the forest was diverted for the various development activities during the post-Independence period. According to the Ministry of Forest and Environment (2004) about 4.3 million hectares forest land was diverted for various development activities between the periods of 1952–1980 of which about 0.5 million hectares of forest land was diverted for

⁵¹ Fernandes, 2011.

⁵² Fernandes, 2011.

⁵³ Louis, 2000, p. 4088.

river valley projects, 0.134 million hectares for industries and townships, 0.061 hectares for infrastructure development and 1.008 million hectares for miscellaneous purposes.⁵⁴ According to the Ministry of Environment and Forests, the rate of diversion of forest land for non-forestry purposes was to the tune of 1,50,000 hectares per annum between 1950 and 1980.

Until 1976, the forest sector was in the state list. Accordingly, to divert the forest land for various development activities was decided by the state governments. In 1976, the Central government issued guidelines to states to consult the government of India prior to diversion of land, which is more than 10 hectares for development projects. Even after enactment of the Forest (Conservation) Act, 1980, a large extent of forest land was diverted for the various development activities. About 9.55 lakh hectares have been diverted between 1980 and 2004.⁵⁵ According to the Ministry of Forests and Environment: ‘Since its enactment in 1980 till 31st December 2007, about 16,939 developmental projects involving 11.56 lakh hectares forest area have been granted forestry clearance’.⁵⁶ ‘According to recent “forest clearances” offered by MoEF that clearly indicated towards “neo-liberal agenda” created critical pressure on forestland. In the month of July–August 2008 itself, final forest clearance has been granted to 35 projects including an area of 4544.396 hectares’.⁵⁷

The forest land was diverted for various development purposes viz., defence, dispensary/hospital, disputed settlement claims, drinking water, encroachment, forest village conversion, hydel, irrigation, mining, others, railway, rehabilitation, road, school, thermal, transmission line, village electrification and wind power. About one-third of the diverted forest land was classified as ‘encroachment’. In other words, the tribals and other forest-dwellers occupied land was shown as ‘encroachment’ by the forest department. As per the Scheduled Tribes and Other Forest Dwellers (Recognition of Rights) Act, 2006, most of these may be regularized in different states. For regularization purposes total diversion

⁵⁴ Ministry of Forest and Environment, 2004.

⁵⁵ Ibid.

⁵⁶ MoEF Annual Report 2007–08, p. 64.

⁵⁷ Government of India, 2008, p. 118.

of forest till June 2008 was 7,76,882.52 hectares. The next highest diversion is under the category of 'others' meant for individuals and other private bodies. A little less than one-third of the diversion of forest land was meant for mining, hydel and irrigation projects, in almost equal extent.⁵⁸ It is to be pointed out that only a meagre percentage of forest land was diverted for development activities viz., drinking water (0.16%), railway (0.16%), school (0.22%), village electrification (0.02%). Precisely, the forest land is diverted largely to the private and commercial interests than that of the actual development purposes even after the enactment of Forest (Conservation) Act, 1980. However, after enactment of the Forest (Conservation) Act, 1980, the rate of diversion of forest land for non-forestry purpose came down to less than 38,000 hectares per annum, as per the Ministry of the Forest and Environment.

Except few states, invariably every state has diverted the forest land for various development activities after enactment of the Forest (Conservation) Act, 1980. Between 1980 and 2003, 8.73 lakh hectares of forest land was diverted for the various development activities of which about 3.73 lakh hectares, that is, 42.70% is from Madhya Pradesh. About four-fifths of the total forest land diverted between 1980 and 2003 is from seven states viz., Madhya Pradesh (42.70%), Maharashtra (9.16%), Uttar Pradesh (8.70%), Gujarat (6.41%), Arunachal Pradesh (5.07%), Kerala (4.67%) and Karnataka (4.18%).⁵⁹ In the subsequent years also, a large proportion of the forest land was diverted for various development purposes. According to the Ministry of Forests and Environment: 'Since its enactment in 1980 till 31st December, 2007, about 16,939 developmental projects involving 11.56 lakh hectares forest area have been granted forestry clearance'.⁶⁰ The Forest (Conservation) Act, 1980 resulted in drastic reduction in the rate of diversion of forest land for non-forest purposes—it was about 1.65 lakh hectares per annum during the 25 years period from 1951–52 and it has reduced to approximately 36,300 hectares per annum since then.⁶¹

⁵⁸ *Ibid.*, p. 120.

⁵⁹ Rajya Sabha Unstarred Question No. 395, dated 05.12.2003

⁶⁰ MoEF Annual Report 2007–08, p. 64.

⁶¹ MoEF Annual Report 2011–12, p. 65.

Forest land has been under immense pressure for its diversion for non-forestry purposes, particularly during the post-Independence planning regime. Indeed, the forest land was diverted not only for development purposes but also in favour of individuals and private bodies. For instance, in Tamil Nadu, about 74,893 hectares of forest land was diverted for other purposes between 1947 and 1977 of which, 40,612.50 hectares (54.27%) was meant for individuals, private bodies and rehabilitation of non-tribals in the forest areas. About 34,280.71 hectares (45.73%) of forest land was diverted for various other development programmes during the same period.⁶² Likewise, the forest land was diverted either for the individuals or for private bodies and various development projects in different states of the country.

Impact on Livelihood

Since the last decade of the nineteenth century, a large number of people have been displaced for various development activities through the Land Acquisition Act, 1894. 'The 1894 act has been the central tool for mass displacement of people from their sources of subsistence and culture, more so since the policy of globalisation was introduced'.⁶³ Since Independence, a vast area of land resources have been acquired for various development activities resulting in a huge number of displacement of population without proper compensation and rehabilitation measures.

Studies show that around 25 million hectares have been acquired during 1947–2000 through it, more than half of it community-owned. Much more land is being taken over after liberalisation for private profit. The policy on the SEZs stipulates that only half of the land they get has to be built up. The rest can be used for real estate speculation at a high profit. People's displacement is the consequence of such 'national development'.⁶⁴ Large infrastructure projects, including dams, ports and mining, environmental conservation

⁶² Saravanan, 2007, p. 739.

⁶³ Pinto, 1998, p. 3109.

⁶⁴ Fernandes, 2011.

projects, and designation of large areas as tax-free Special Economic Zones (SEZs), have been responsible for the displacement of millions of rural families, most of whom have not received rehabilitation.⁶⁵

In India, it is estimated that some 21 million to 42 million people have been displaced by dams and reservoirs during the post-Independence period.⁶⁶

Since Independence, a large number of people have been displaced and a large proportion of them belong to the SCs and STs. According to Human Rights in India: Status Report 2012:

Not taking into account of displacement due to armed and ethnic conflict, India is estimated to have the highest number of people displaced annually as a result of ostensible 'development' projects. Independent experts estimate the number of those displaced by such projects since India's independence (1947), is at between 60 and 65 million. This amounts to around one million getting displaced every year since independence. Of these displaced, over 40% are tribals and another 40% consist of Dalits and other rural poor. The vast majority of the displaced have not received adequate resettlement.⁶⁷

A large number of people have been displaced due to the various development activities viz., dams, mines, industries, wildlife sanctuaries and other purposes. The total number of people displaced between 1950 and 1990 was about 213 lakhs of which nearly one-fourth of them were rehabilitated and three-fourth of them were left non-rehabilitated. It is to be pointed out more than three-fourths (77%) of them were displaced due to irrigation dams and reservoirs; 12% mines; 6% industries; 3% wildlife sanctuaries and the rest of 2.3% for other purposes.⁶⁸

⁶⁵ Working Group on Human Rights in India and the UN, 2012, p. 7.

⁶⁶ World Commission on Dams, 2000, p. 1.

⁶⁷ Working Group on Human Rights in India and the UN, 2012, p. 4.

⁶⁸ Fernandes, 1997.

Unfortunately, a large proportion of the displaced people belong to the weaker sections viz., SCs, STs and OBCs. Of the total number of displaced people (213 lakhs), about 85.30 lakhs form about 40% belongs to the STs. Of the total number of the displaced tribal people, one-fourth were rehabilitated and three-fourth remained non-rehabilitated in the past four decades between 1950 and 1990.⁶⁹ Precisely, a large number of private and common property lands were acquired for various development activities and private companies resulting in a threat to the environment and a to large number of people mainly belonging to the SCs, STs and OBCs during the post-Independence period.

Housing Policies and Emergence of Real Estate Companies

Until the Seventh Five-Year Plan the government has developed housing schemes mainly for weaker sections, government employees and slum clearance to name a few. The Seventh Five-Year Plan (1985–90) envisaged ‘the major responsibility for house construction would have to be left to the private sector’ and government has to facilitate ‘the development of suitable housing sites on a large scale’. It emphasized that the government has to undertake land acquisition and development in urban areas for housing and the construction activities have to be left to the private sector. In other words, ‘the Government has to play an active role through developing the necessary delivery system in the form of a housing finance market and taking steps to make developed land available at right places and at reasonable prices’. The National Housing Policy was also pronounced during this plan period.⁷⁰ The Seventh Five-Year Plan opened up the private sector in the housing sector which led to phenomenal growth of real estate sector during the last two decades.

After liberalization, real estate has emerged as an important sector in our economy both in terms of employment and its contribution to the GDP.

The real estate sector is a major employment driver, being the second largest employer next only to agriculture.⁷¹ About

⁶⁹ Ibid.

⁷⁰ *Seventh Five-Year Plan*, chapter 12.

⁷¹ *Tenth Five-year Plan (2002–07)*, p. 829.



250 ancillary industries such as cement, steel, brick, timber, building materials etc. are dependent on the real estate industry.⁷² The term 'real estate' is defined as land, including the air above it and the ground below it, and any buildings or structures on it. It covers residential housing, commercial offices, trading spaces such as theatres, hotels and restaurants, retail outlets, industrial buildings such as factories and government buildings. Real estate involves the purchase, sale, and development of land, residential and non-residential buildings. The main players in the real estate market are the landlords, developers, builders, real estate agents, tenants, buyers etc.⁷³ The Indian real estate market is still in its infancy, largely unorganised and dominated by a large number of small players, with very few corporate or large players having national presence.⁷⁴ Supply of urban land is largely controlled by state-owned development bodies like the Delhi Development Authority (DDA) and Housing Boards leaving very limited developed space free, which is controlled by a few major players in each city.⁷⁵

During the last two decades, private lands were acquired by the government for the real estate companies largely in the urban areas which led to protest from the farmers in different parts of the country.

Resettlement and Rehabilitation Policies

Since Independence, the government initiated several development programmes that displaced a large number of people but the government never had a policy for the resettlement and rehabilitation of displaced people, at the national level. Due to the Supreme Court's observation, United Nations Organisations, World Bank and other factors, the government is thinking of formulating the resettlement and rehabilitation policies.⁷⁶ Since the 1980s, though the government is contemplating to formulate a policy for the displaced people but it has failed to come out with an appropriate policy.⁷⁷ However, some states and Central

⁷² Ibid., p. 829.

⁷³ Ibid.

⁷⁴ Ibid., p. 830.

⁷⁵ Ibid.

⁷⁶ Sinha, 1996, pp. 1454–55; Patkar, 1998, p. 2432.

⁷⁷ Iyer, 2007, p. 3103.

Ministries have their own policies and guidelines for resettlement and rehabilitation.⁷⁸ Indeed, the ‘National Policy on the Resettlement and Rehabilitation of Project Affected Families, 2003’ is the first policy at the national level for the project affected people. Subsequently, a comprehensive ‘National Rehabilitation and Resettlement Policy, 2007’ was introduced.

a) National Policy on the Resettlement and Rehabilitation of Project Affected Families, 2003

The policy recognizes the need to minimize large-scale displacement to the extent possible and also emphasizes the importance on rehabilitation and resettlement that not only directly affects people but also their dependents for their livelihood to protect the displaced 500 families or more in plain areas and 250 families in hilly areas, Desert Development Programme (DDP) blocks, and areas mentioned in Schedule V and VI of the Constitution. The objectives of this policy are: to minimize displacement and to identify non-displacing or least displacing alternatives; to plan the resettlement and rehabilitation of Project Affected Families (PAFs) including special needs of Tribals and vulnerable sections; to provide better standard of living to PAFs; and to facilitate harmonious relationship between the requiring body and PAFs through mutual cooperation. To carry out the above objectives, the government has to notify the administrator and commissioner once it has decided to acquire the land for any project. This policy has also laid down the procedures to be followed for declaration of the affected zone, carrying out survey and census of project’s affected families, assessment of government land available and land to be acquired for the purpose of resettlement and rehabilitation, preparation of draft scheme/plan for rehabilitation and resettlement and its final publication. This policy envisaged to minimize the displacement and at the same time it emphasized the need to provide appropriate compensation and rehabilitation to the displaced people both in plain areas and special areas as well as different social groups.

⁷⁸ National Policy on Resettlement and Rehabilitation of Project Affected Families, 2003.

However, this policy has not dealt with the issues which made adverse impacts on the affected families viz., economic, environment, social and cultural needs that have to be assessed in a participatory and transparent manner.

b) National Rehabilitation and Resettlement Policy, 2007

This policy envisaged to minimize the displacement of people, the total area of land and the acquisition of agricultural land for the project and at the same time it emphasized the need to provide appropriate compensation and rehabilitation to the displaced people in a transparent manner. The objectives of the policy are: (a) to minimize displacement and to promote as far as possible, non-displacing or least-displacing alternatives; (b) to ensure an adequate rehabilitation package and expeditious implementation of the rehabilitation process with the active participation of the affected families; (c) to ensure that special care is taken for protecting the rights of the weaker sections of the society, especially members of the SCs and STs, and to create obligations to the State in their treatment with concern and sensitivity; (d) to provide a better standard of living, making concerted efforts for providing sustainable income to the affected families; (e) to integrate rehabilitation concerns into the development planning and implementation process; and (f) to facilitate harmonious relationship between the requiring body and affected families through mutual cooperation.

This policy also emphasized that the government has to ensure that the Social Impact Assessment (SIA) is conducted for a new project or expansion of an existing project, which involves involuntary displacement of 400 or more families in plain areas, or 200 or more families from tribal or hilly areas, DDP blocks or areas mentioned in Schedule V or Schedule VI of the Constitution. The SIA should consider the impact of the project on public and community properties, assets and infrastructure. It also emphasized that along with an SIA, an Environmental Impact Assessment (EIA) study shall be carried out as per the provisions of any law, rules, regulations or guidelines. The government has to call for public hearings, if both EIA and SIA are required for the project-affected area. To examine the SIA report, the

government has to constitute an independent multi-disciplinary expert group.⁷⁹ If both EIA and SIA are required, a copy of the SIA report shall be made available to the agency prescribed in respect of EIA by the Ministry of Environment and Forests, and a copy of the EIA report shall be shared with the expert group.

This policy envisaged appointing an Administrator and Commissioner for rehabilitation and resettlement for the project and his functions and duties have to be defined explicitly. Even if the number of affected families is less than the prescribed number the government has to make adequate administrative arrangements for their rehabilitation and resettlement. The declaration of the policy, baseline survey to be carried out, census for identification of the persons and families likely to be of affected, assessment of government land available and land to be arranged for rehabilitation and resettlement, declaration of the resettlement area or areas, preparation of the draft rehabilitation and resettlement scheme or plan and its final publication should be published in at least three daily newspapers, of which two should be in the local vernacular. A copy of the notification should be affixed on the notice board of the concerned *gram panchayats* or municipalities and other prominent places in the affected area and the resettlement area. Every survey shall contain comprehensive information about the affected families and should be completed within a period of 90 days from the date of declaration. After completing the surveys, the notification has to be issued to reach all persons likely to be affected. A draft of the details of the findings of the survey should be published and objections and suggestions invited from all persons likely to be affected. After 30 days of the notification of the draft survey and after incorporating the objections and suggestions the report should be submitted to the government. Within 45 days after receiving the report, the government should publish the final details of survey in the official gazette.

After completion of the baseline survey and census, the administrator has to prepare a comprehensive draft scheme/plan for

⁷⁹ The expert group consisting of two non-official social science and rehabilitation experts, the Secretary/Secretaries of the department(s) concerned with the welfare of SCs and STs of the appropriate Government or his (their) representative(s), and a representative of the requiring body shall be nominated by the government.

the rehabilitation and resettlement of the affected families after consultation with representatives of the affected families including women and the representative of the requiring body. The draft scheme or plan may be made known locally by wide publicity in the affected and resettlement areas and should be discussed in *gram sabhas* in rural areas and in public hearings in urban and rural areas where *gram sabhas* do not exist. The consultation with the *gram sabha* or the *panchayats* at the appropriate level in the Scheduled Areas under Schedule V of the Constitution shall be in accordance with the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. In cases of involuntary displacement of 200 or more STs families from the Scheduled Areas, the concerned Tribes Advisory Councils may also be consulted. The administrator shall submit the draft scheme or plan for rehabilitation and resettlement to the government for its approval. In case of a project involving land acquisition on behalf of a requiring body, the government has to obtain the consent of the requiring body and has to make sure that the requiring body has agreed to bear the entire cost of rehabilitation and resettlement benefits and other expenditure before approving it. After approving the rehabilitation and resettlement scheme or plan, the government shall publish the notification in the official gazette.

Land compulsorily acquired for a project cannot be transferred to any other purpose except for a public purpose and if not utilized for a period of five years should be taken over by the government. Even if it is transferred to the private sector, public sector or joint sector, 80% of any net unearned income shall be shared amongst the persons from whom the lands were acquired.

The rehabilitation and resettlement benefits shall be extended to all the affected families. Any affected family owning a house may be allotted free of cost a house site to the extent of actual loss of area but not more than 250 sq.m in rural areas or 150 sq.m in urban areas. In urban areas, a house of up to 100 sq.m carpet area may be offered in a multi-storied building complex. Each affected below-poverty-line family without homestead land residing in the affected area continuously for a period of not less than three years are entitled to a house of minimum 100 sq.m carpet area in rural areas, or 50 sq.m carpet areas

in urban areas. If the affected family is not interested to take the house it shall get a suitable one-time financial assistance and the amount shall not be less than what is given under any programme of house construction by the Government of India. Each affected family owning agricultural land in the affected area and whose entire land has been acquired or reduced to the status of marginal farmers, agricultural land or cultivable wasteland to the extent of actual land loss subject to a maximum of one hectare of irrigated land or two hectares of unirrigated land or cultivable wasteland should be provided, if government land is available in the resettlement area. In the case of irrigation or hydel projects, the affected families shall be given preference in allotment of land-for-land in the command area of the project, to the extent possible. Such lands may be consolidated, and plots of suitable sizes should be allotted to the affected families who could be settled there in groups. In case a family cannot be given land in the command area of the project or the family opts not to take land there, such a family may be given monetary compensation on replacement cost basis for their lands lost, for purchase of suitable land elsewhere. In the case of irrigation or hydel projects, the State Governments may formulate suitable schemes for providing land to the affected families in the command areas of the projects by way of pooling of the lands that may be available or, otherwise, could be made available in the command areas of such projects. In the case of irrigation or hydel projects, fishing rights in the reservoirs shall be given to the affected families. In case of a project involving land acquisition on behalf of a requiring body, the stamp duty and other fees payable for registration of the land or house shall be allotted to the affected families and due expenses shall be borne by the requiring body.

In case of allotment of wasteland/degraded land and agricultural land in lieu of the acquired land, the affected family shall get a one-time financial assistance not less than Rs. 15,000 per hectare and Rs. 10,000 respectively for land development and agricultural production. Each affected family having cattle, shall get financial assistance of not less than Rs. 15,000 for construction of a cattle shed. Each affected family shall get a one-time financial assistance not less than Rs. 10,000, for shifting of the family, building materials, belongings and cattle. Each affected person who belongs to the group of rural

artisan, small trader or self-employed person shall get a one-time financial assistance not less than Rs. 25,000 for construction of a working shed or shop.

In the project involving land acquisition on behalf of a requiring body, at least one person per nuclear family should be given employment opportunities; training for the affected persons; scholarships and other skill development opportunities to the eligible persons and preference to the affected persons or their groups or cooperatives in the allotment of outsourced contracts, shops or other economic opportunities coming up in or around the project site; and preference to the landless labourers and unemployed affected persons during the construction phase. If the affected families have not been provided agricultural land or employment they shall be entitled to avail rehabilitation grant equivalent to 750 days of minimum agricultural wages. If the requiring body is a company, option may be given to the affected family to buy 25% of their rehabilitation grant amount in the form of shares or debentures and it may be extended up to 50% by the government. In cases where the acquisition of agricultural land or involuntary displacement takes place on account of land development projects, in lieu of land-for-land or employment, such affected families would be given site(s) or apartment(s) within the development project, in proportion to the land lost, but subject to such limits as may be defined by the government. In case of a project involving land acquisition on behalf of a requiring body, each affected family shall get a monthly subsistence allowance equivalent to 25 days of minimum agricultural wages per month for a period of one year from the date of displacement. Further, the project authorities shall, at their cost, arrange for annuity policies that will pay a pension for life to the vulnerable affected persons subject to a minimum of Rs. 500 per month.

If land is acquired in cases of urgency, each affected family which is displaced shall be provided with transit and temporary accommodation, pending rehabilitation and resettlement scheme or plan, in addition to the monthly subsistence allowance and other rehabilitation and resettlement benefits. In case of linear acquisitions, in projects relating to the railway lines, highways, transmission lines, laying of pipelines and other such projects wherein only a narrow stretch of land is acquired for the purpose of the project or is utilized for right

of way, each affected family shall be offered by the requiring body an ex-gratia of payment not less than Rs. 20,000, in addition to the compensation or any other benefits. In this case, the land-holder becomes landless or is reduced to the status of a 'small' or 'marginal' farmer; other rehabilitation and resettlement benefits should be extended to such affected families. The affected families may be given the option to take a lump-sum amount in lieu of one or more of the benefits.

In case of a project involving land acquisition on behalf of a requiring body which involves involuntary displacement of 200 or more ST families, a Tribal Development Plan shall be prepared to lay down the procedure for settling land rights and programme for development of alternate fuel, fodder and non-timber forest produce (NTFP) resources on non-forest lands within a period of five years. The concerned *gram sabha* or the panchayats in the Scheduled Areas under Schedule V of the Constitution or Councils in the Schedule VI Areas shall be consulted in all cases of land acquisition including in cases of urgency before the issue of a notification. In the Panchayats (Extension to the Scheduled Areas) Act, 1996 and other relevant laws, consultation shall be in accordance with the provisions. In cases of involuntary displacement of 200 or more ST families from the Scheduled Areas, the concerned Tribes Advisory Councils (TACs) may also be consulted. Each affected family of ST followed by SC categories shall be given preference in the allotment of land-for-land, if Government land is available in the resettlement area. In case of land being acquired from members of the STs, at least one-third of the compensation amount due shall be paid to the affected families at the outset as first instalment and the rest at the time of taking over the possession of the land. In case of a project involving land acquisition on behalf of a requiring body, each ST affected family shall get an additional one-time financial assistance equivalent to 500 days of minimum agricultural wages for loss of customary rights or usages of forest produce. The affected ST families will be re-settled, as far as possible, in the same Schedule Area in a compact block, so that they can retain their ethnic, linguistic and cultural identity. The resettlement areas predominantly inhabited by the STs shall get land free of cost for community and religious gatherings. In case of the ST affected families if the resettled habitation is out of the district they will get 25% higher

rehabilitation and resettlement benefits in monetary terms. In the case of irrigation or hydel projects, the affected STs, 'others', traditional forest dwellers and the SC families having fishing rights in a river or pond, or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects. The ST and SC affected families enjoying reservation benefits in the affected area shall be entitled to get the reservation benefits at the resettlement area(s). The affected ST families, who were in possession of forest lands in the affected area prior to 13 December 2005, shall also be eligible for the rehabilitation and resettlement benefits.

In all cases of involuntary displacement of 400 families or more in plain areas, or 200 families or more in tribal or hilly areas, DDP blocks or areas mentioned in Schedule V or Schedule VI to the Constitution, comprehensive infrastructural facilities and amenities shall be provided in the resettlement areas. All affected families shall be provided basic infrastructural facilities and amenities like drinking water, electricity, schools, dispensaries, and access to the resettlement sites even if there has been involuntary displacement of less than 400 families in plain areas. While shifting the population of the affected area to the resettlement area, the Administrator for Rehabilitation and Resettlement must ensure that the entire population of the village or area to be shifted belongs to a particular single community as far as possible. They should be resettled in a compact area, so that socio-cultural relations and social harmony amongst the shifted families are not disturbed and SCs affected are resettled in the areas close to the villages.

In case of a project involving land acquisition on behalf of a requiring body, the requiring body will be responsible for development of the defined geographic area on the periphery of the project site as decided by the government, and will be required to contribute to the socio-economic development of the areas contiguous to its area of operation. For this purpose, the requiring body will earmark a percentage of its net profit or, in case no profit is declared by the requiring body in a particular year, for that year, such minimum alternative amount as may be determined by the government after consultation with the requiring body, to be spent within the specified zone. The requiring body will carry out the developmental activity within

this zone in close coordination with the Commissioner for Rehabilitation and Resettlement.

For the grievance redressal mechanism, this policy introduced the Rehabilitation and Resettlement Committee⁸⁰ at the project level to monitor and review the progress of implementation of the scheme or plan of rehabilitation and resettlement of the affected families, and to carry out post-implementation social audits. This policy also suggested a Rehabilitation and Resettlement Committee at the district level under the chairpersonship of the District Collector for those who are not covered at the project level. The policy also proposed to appoint an Ombudsman (a trusted intermediary) for time-bound disposal of the grievances arising out of the matters covered by this policy. In case a project covers an area in more than one State or Union territory where the project affected families are or had been residing, or proposed to be resettled, the Central Government in the Ministry of Rural Development (Department of Land Resources) shall, in consultation with the concerned States or Union territories, appoint the Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement, a common Rehabilitation and Resettlement Committee, and the Ombudsman for the purposes of this policy. A National Monitoring Committee, to be chaired by the Secretary, Department of Land Resources for reviewing and monitoring the progress of implementation of rehabilitation and resettlement schemes or plans. Further it also suggested that for each major project, Oversight Committee for rehabilitation and resettlement in the Ministry/ Department shall be established. In addition to that a National Rehabilitation Commission shall be set up by the Central Government with the power to exercise external oversight over the rehabilitation and resettlement of affected families.

⁸⁰ Members of the committee are: a representative of women residing in the affected area; a representative each of the Scheduled Castes and Scheduled Tribes residing in the affected area; a representative of a voluntary organization; a representative of the lead bank; Chairperson(s) of the panchayats and municipalities located in the affected area, or their nominee(s); Members of Parliament and Members of Legislative Assembly of the area included in the affected area; the Land Acquisition Officer of the project; and a representative of the requiring body.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into force after amalgamation of three bills viz., Land Acquisition (Amendment) Bill, 2007, Rehabilitation and Resettlement Bill, 2007 and Land Acquisition, Rehabilitation and Resettlement Act, 2011 and the recommendations of the Standing Committee on Land Acquisition, Rehabilitation and Resettlement Bill, 2011. Based on the report of Standing Committee on Rural Development, the Central Government introduced the new bill 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013' and passed it in the Parliament on 29 August 2013.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013 was introduced

to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

Under this act, the government can acquire land for its own use, hold and control, including for Public Sector Undertakings and for public purposes except (13 acts) the enactments relating to land acquisition specified in the Fourth Schedule. They are: (a) for strategic purposes relating to naval, military, air force, and armed forces,

including central paramilitary forces or any work vital to national security or defence of India or State police or safety of the people; (b) for infrastructure projects like transport,⁸¹ energy,⁸² water sanitation,⁸³ communication,⁸⁴ and social and commercial infrastructure⁸⁵ excluding private hospitals, private educational institutions and private hotels; (c) for projects involving agro-processing;⁸⁶ (d) for projects for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy; (e) for projects for water harvesting and water conservation structures and sanitation; (f) for projects for

⁸¹ Transport includes: Roads and bridges, Ports, Inland Waterways, Airports, Railway Tracks, tunnels, viaducts, bridges which includes supporting terminals, and Urban Public Transport (except rolling stock in case of urban road transport).

⁸² Energy includes: Electricity Generation, Electricity Transmission, Electricity Distribution, Oil pipelines, Oil/Gas/Liquefied Natural Gas (LNG) storage facility which includes strategic storage of crude oil and Gas pipelines which includes city gas distribution network.

⁸³ Water sanitation includes: Solid Waste Management, Water supply pipelines, Water treatment plants, Sewage collection, treatment and disposal system, Irrigation (dams, channels, embankments, etc. and Storm Water Drainage System).

⁸⁴ Communication includes: Telecommunication (fixed network) which includes optic fibre/cable networks which provide broadband/internet and telecommunication towers.

⁸⁵ It includes: Education Institutions (capital stock), Hospitals (capital stock) which includes Medical Colleges, Para Medical Training Institutes and Diagnostics Centres, Three-star or higher category classified hotels located outside cities with population of more than one million, Common infrastructure for industrial parks, SEZ, tourism facilities and agriculture markets, Fertilizer (Capital investment), Post harvest storage infrastructure for agriculture and horticultural produce including cold storage, Terminal markets, Soil-testing laboratories and Cold Chain which includes cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat.

⁸⁶ Agro-processing includes: supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute.

government administered, government aided educational and research schemes or institutions; (g) for projects for sports, healthcare, tourism and transportation of space programme; (h) for any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament; (i) for projects for project-affected families; (j) for projects for housing, or such income groups, as may be specified from time to time by the appropriate government; (k) for projects for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas; (l) for projects for residential purposes for the poor or landless or for persons residing in areas affected by natural calamities, or for persons displaced or affected by the implementation of any scheme undertaken by the government, any local authority or a corporation owned or controlled by the State; (m) for public purpose under public private partnership projects, where the ownership of the land continues to vest with the government; (n) for public purpose, the private companies can acquire the land with the prior consent of at least 80% of the affected families; (o) for public purpose under public private partnership projects land can be acquired with the prior consent of at least 70% of the affected families.

To ensure transparency in the land acquisition process, this act made an important provision to consult the concerned local bodies—Panchayat, Municipality or Municipal Corporation, as the case may be at village level or ward level, in the affected area. Further, this act made provisions to publish various notifications and surveys—Social Impact Assessment (SIA), Rehabilitation and Resettlement plan—in the local language to the Panchayat, Municipality or Municipal Corporation, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil. These are to be published in the affected areas and uploaded on the website of the government.

This act emphasized that if the government intends to acquire land for a public purpose, it shall consult the concerned local bodies of the affected area and carry out an SIA study in such manner and date as may be specified in the notification and publish it in newspapers and also it display in the local bodies besides uploading the same in the

website of the government. Adequate representation has been given to the representatives of different level of local bodies at the stage of carrying out the SIA study. The government shall ensure the completion of the SIA study within a period of six months from the date of its commencement.

While preparing the SIA study to prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for the above specific components, a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families. The government shall ensure that the SIA study report and the Social Impact Management Plan are published in the affected areas. The SIA report shall be made available to the Impact Assessment Agency authorized by the Central Government to carry out the environmental impact assessment.

The government shall ensure that the SIA report is evaluated by an independent multi-disciplinary expert group.⁸⁷ If the expert group opines that the project does not serve any public purpose or the social costs and adverse social impacts of the project outweigh the potential benefits, it can recommend abandoning of the project. If the government proceeds with the acquisition, against the expert group's recommendation, then it shall ensure that its reasons for doing so are recorded in writing. If the expert group opines that the project will serve any public purpose and the potential benefits outweigh the social costs and adverse social impacts, it shall make specific recommendations regarding the absolute bare-minimum extent of the project needed and emphasizing that there are no other less displacing options available for the project to be recorded in writing. The recommendations of the expert group shall be made available in the local language to the local bodies and the affected areas. The government shall ensure that there is a legitimate and bona fide public

⁸⁷ Independent multi-disciplinary Expert Group consists of (a) two non-official social scientists; (b) two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be; c) two experts on rehabilitation; and d) a technical expert in the subject relating to the project.

purpose and that the potential benefits and the public purpose outweigh the social costs and adverse social impact. It must also ensure that only the minimum area of land required for the project is granted and there is no unutilized land which has been previously acquired, before taking a decision.

The government, after examining the report of the Collector and expert group on the SIA study, recommends the project which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected. The decision of the government shall be made available in the local language to the local bodies and other government offices and affected areas. While recommending the project, the government has to ensure that all procedures are followed in the process of acquisition.

For the safeguard of food-security this act made provisions that no irrigated multi-cropped land shall be acquired. Even in an exceptional case, only a certain percentage of total irrigated multi-cropped land of the district as notified by the government can be acquired for public purpose. In that case, an equivalent area of culturable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the government for investment in agriculture for enhancing food-security. It is also suggested that the proportion of the agricultural land for all projects in a district and state should not exceed the total net sown area as prescribed by the government. However, the above provisions shall not apply in the case of projects that are linear in nature like railways, highways, major district roads, irrigation canals, power lines and the like.

According to this act, if the land is required or likely to be required for any public purpose, a notification to that effect along with details of the land to be acquired, a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the SIA report and particulars of the administrator appointed for the purposes of rehabilitation and resettlement shall be published in the official gazette, in two daily newspapers of which one

shall be in the regional language, and the notification should be displayed in the affected area, local bodies and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil and on the website of the government in public domain. Subsequently, the content of the notification has to be sent to the concerned Gram Sabha or Sabhas, municipalities and the autonomous councils to discuss the issues at the meeting. After issuance of the notice, the Collector has to undertake and complete the exercise of updating of land records as prescribed within a period of two months. After the notification the government will take over the land.

After the preliminary notification, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families. Based on the survey and census, the administrator has to prepare a draft Rehabilitation and Resettlement Scheme which shall include particulars of the rehabilitation and resettlement entitlements of each landowner and landless and the requirement for the resettlement area, a list of government buildings, details of the public amenities and infrastructural facilities and the time limit for implementing the scheme. The draft scheme shall be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities and also a public hearing shall be conducted after giving adequate publicity about the date, time and venue for the public hearing at the affected area.

On completion of public hearing, the administrator has to submit the draft scheme along with a specific report on the claims and objections raised in the public hearing to the Collector. The Collector shall review the draft scheme with the Rehabilitation and Resettlement Committee at the project level, and, with his suggestions, submit it to the Commissioner Rehabilitation and Resettlement for approval. After the approval, the Commissioner, Rehabilitation and Resettlement Scheme is to be made available in the local language to the local bodies and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and thereafter it has to be published in the affected areas, and uploaded on the website of the appropriate government.

After considering the report, if the government is satisfied that any particular land is needed for a public purpose, a declaration shall be

made along with a resettlement area for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a secretary to such government or of any other officer duly authorized to certify its orders. The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with the draft declaration.

The Collector shall make an award within a period of 12 months from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. However, the government shall have the power to extend the period of 12 months and such a decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned. The assessment and determination of the market value must be based on the registration of sale deeds or agreements to sell or the average sale price for similar type of land situated in the nearest village or nearest vicinity area or consented amount of compensation as agreed upon in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher.

While determining the amount of compensation, the Collector shall take into consideration the damage sustained by the person interested due to the acquisition of any standing crops and trees, severing such land from his other land, injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings, compelled to change his residence or place of business, the reasonable expenses incidental to such change, diminution of the profits of the land between the time of the publication of the declaration and the time of the Collector's taking possession of the land and any other ground which may be in the interest of equity, justice and beneficial to the affected families.

This act proposes the Rehabilitation and Resettlement Award in a detailed manner. In every resettlement area, the Collector shall ensure the provision of all infrastructural facilities and basic minimum amenities as specified in the Third Schedule. The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the

entitled person(s) within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule. These infrastructural entitlements shall be provided within a period of 18 months from the date of the award. In case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed in six months prior to submergence of the lands acquired. The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families. However, in cases of urgency, on the expiration of 30 days from the publication of the notice, the Collector can take possession of any land needed for a public purpose and such land shall thereupon vest absolutely with the government, free from all encumbrances and the compensation award of the Collector's decision will be final. Even in the case of emergency, restriction should be made to the minimum area required for the defense of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament. The Collector shall not take possession of any building or part of a building without giving to the occupier thereof at least 48 hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable the occupier to remove his moveable property from such a building without unnecessary inconvenience. Before taking possession of any land, the Collector shall tender payment of 80% of the compensation for such land. An additional compensation of 75% of the total compensation shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated. However, no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interests of the State or relations with foreign States.

According to this act, as far as possible, no acquisition of land shall be made in the Scheduled Areas and even such acquisition does take place it shall be done only as a demonstrable last resort. Even for the last resort, consent should be obtained from the Panchayats or the Autonomous Districts Councils, in all cases of land acquisition including acquisition in case of urgency, before issue of a notification. In case

a project involving land acquisition requires involuntary displacement of SC or ST families, a Development Plan shall be prepared, laying down the details of procedure for settling land rights due and restoring titles of the STs and the SCs on the alienated land by undertaking a special drive together with land acquisition. The Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years. In case of land being acquired from members of the SCs or the STs, at least one-third of the compensation amount due shall be paid to the affected families initially as first installment and the rest shall be paid after taking over of the possession of the land. The affected families of the STs shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity. The resettlement areas predominantly inhabited by the SCs and the STs shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings. The affected STs, other traditional forest dwellers and the SCs having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects. Where the affected families belonging to the SCs and the STs are relocated outside the district, they shall be paid an additional 25% rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of Rs. 50,000. All benefits, including the reservation benefits available to the STs and the SCs in the affected areas shall continue in the resettlement area. Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the same shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights.

The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and their proper implementation. He is also responsible for the post-implementation social audit in consultation with the Gram Sabha in rural areas and municipality in urban areas. Where land proposed to be acquired is equal to or more than 100 acres, the government shall

constitute a Rehabilitation and Resettlement Committee under the chairmanship of the Collector to monitor and review the progress of implementation of the scheme and to carry out post-implementation social audits in consultation with the Gram Sabha in rural areas and municipality in urban areas.

Other than the government, Government Company and association of persons or trust or society is purchasing land through private negotiations beyond the prescribed limit by the state, they have to pay the rehabilitation and resettlement costs. If any person is purchasing land beyond the prescribed limit by the state through private negotiations he shall file an application with the District Collector notifying him of: (a) intent to purchase; (b) purpose for which such purchase is being made; and (c) particulars of lands to be purchased. Based on the recommendation of Rehabilitation and Resettlement Scheme Commissioner, the Collector shall pass individual awards.

This Act also proposed to establish a National Monitoring Committee/State Monitoring Committee to monitor and review the progress of implementation of the Rehabilitation and Resettlement scheme. For the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, one or more Authorities to be known as “the Land Acquisition, Rehabilitation and Resettlement Authority” will have to be established by notification. No civil court (other than the High Court under Article 226 or Article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to the land acquisition and no injunction shall be granted by any court in respect of any such matter. Any objection by a person regarding measurement of the land, the amount of the compensation, the beneficiary, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested, has to represent his grievances through the written application to the Collector and within a period of 30 days from the date of receipt of application make a reference to the appropriate Authority. In case the Collector fails to make such a reference the applicant may apply to the Authority, requesting it to direct the Collector to make the reference to it within a period of 30 days. The Requiring Body or any

person aggrieved by the award passed by an Authority under Section 70 may file an appeal to the High Court within 60 days from the date of the Award. If the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, it allows him to file the appeal within a further period not exceeding 60 days.

Conclusion

Since the early nineteenth century, the colonial government acquired land mainly in the urban areas for various development purposes. The enactments were largely confined at the Presidency level. Since the colonial government did not pay much attention for development activities the extent of land acquisition was very limited until the mid-nineteenth century. Soon railway construction was also included as a public work. For the country as a whole, a common land acquisition act was enacted during the mid-nineteenth century. The land acquisition act became imminent since the land and survey settlement was held and ownership was given to the farmers during the third quarter of the nineteenth century. Subsequently, additional provisions were made for the compensation through the Court instead of arbitrators. Finally, the Land Acquisition Act was enacted in 1894. During the colonial period, the land acquisition act underwent several amendments which made provisions to approach the Supreme Court for the compensation, objection against the land acquisition, provisions for emergency acquisition and acquiring land for not only companies but also its company workers. After the post-Independence period, the government has made several major amendments which facilitated the inclusion of several activities in the category of public purpose, additional provisions for the award of the Collector, timeframe to make an award, provisions for the correction of errors, power to call for records, special powers in cases of urgency, matters to be considered in determining compensation, re-determination of the amount of compensation on the basis of the award of the court and payment of interest. Until the early twenty-first century, the Land Acquisition Act was in favour of government and companies and it has not addressed the issues and problems of farmers' resettlement and rehabilitation and ecology and environment.

Since the last quarter of the twentieth century, the government has acquired a huge extent of land for various development activities by private concerns. The government acted as a mere agent to acquire the land for the private companies. At the same time, the government has not ensured the rehabilitation and resettlement and appropriate compensation mechanism. After liberalization, privatization and globalization, land acquisition for development activities has declined but for the companies it has been progressively increased. Since the early 1990s, the government policies have undergone a sea change in favour of privatization and multinational corporations. On the one side, the common property land, particularly forest land was diverted for the various development purpose which created revolts in the tribal areas and on the other hand farmers' lands were acquired for private commercial interest in the name of public purpose. This resulted in serious law and order situations in different parts of the country. Consequently, a series of protests from the farmers have erupted in different parts of the country. Consequently, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into force. It seems that the provisions of the act, while limiting the public purpose ensures comprehensive procedures for land acquisition, rehabilitation and resettlement and appropriate compensation mechanism in consultation of local people. These may reduce the authoritarianism of the state in favour of the affected people. While ensuring the livelihood options of the affected people, the pressure to sustain the common property resources in general and forests in particular for a safe future should be of paramount importance or else, the above frames would prove to be a great threat to the ecology and environment.

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