

**Development, Displacement, and Resistance:
The Law and the Policy on Land Acquisition**

K. B. Saxena

September 2008



COUNCIL FOR SOCIAL DEVELOPMENT
www.csdindia.org

**Development, Displacement, and Resistance:
The Law and the Policy on Land Acquisition**

K. B. Saxena

September 2008



COUNCIL FOR SOCIAL DEVELOPMENT
Sangha Rachana
53 Lodi Estate, New Delhi-110 003 (India)
<csdnd@del2.vsnl.net.in>

Development, displacement, and resistance: The law and the policy on land acquisition

Peasants across the country are opposing development projects which displaced them from their land, habitat, livelihood and environment. They are questioning the paradigm of development itself which is so heavily loaded against them. The law on land acquisition is central to the understanding of this hostility to development. Their resistance is rooted in the conceptual frame and design of the land acquisition act which empowers the government to acquire land of citizens without their consent on payment of meagre financial compensation and creates no obligation to provide alternative land, assured employment and a dignified rehabilitation to rebuild their broken lives. The recent changes proposed by the government in the law to undo this injustice would fail to persuade the agitating peasants to part with their land willingly.

Peasantry in India is in turmoil across the country. It is confronted with a pincer assault by the state driving them ironically to self-destruction in some cases and resistance in others. The nature of challenge has determined the type of its response. Battered by the neo-liberal economic policies, declining investment in agriculture, and volatility of global market, farmers are drowned in despair. Unable to cope with the stress of mounting debt, failure of crops, and low returns from produce, they are taking their own lives. Faced with the increasing prospects of compulsory acquisition of swathes of agricultural land for corporates, the potentially displaced are left with no option but to fight back. The defiance to state policy, unprecedented bonding, and mobilisation are the outcome of this threat to survival. In the former case, the hold over land still provides a flicker of hope. In the latter, the loss of land portends total uncertainty and a bleak future. This underlines the importance peasantry attaches to the retention of their land.

The displacement from land has, therefore, for the first time, gained centrality in the policy process never witnessed before. It could not emerge as a major issue in the past because the scale of acquisition was limited by the capacity of the government to invest in development projects, slower and relatively less diversified economic growth, and the public sector ownership of projects requiring land. Since 1984, the acquisition for 'public purpose' has extended this leverage to private sector companies which has enormously expanded the demand for land and, at the same time, removed the fragile moral basis for such acquisition. Besides, earlier, industrial projects were largely located in 'backward' tribal areas driven by considerations of resource concentration, cheaper cost of acquisition, and the powerlessness of the affected tribal

@ Council for Social Development
Sangha Rachana
53 Lodi Estate, New Delhi-110 003 (India)

Printed at
Kalpana Printing House
L-4, Green Park Extn., New Delhi-110016

communities to put up a sustained resistance to the acquisition of land. Owing to their isolation from centres of decision-making and marginalisation in the larger society, the anguish of tribals facing displacement neither moved the political leaders nor sensitised radical sections in the opposition parties and the civil society. Now that the prospects of acquisition for special economic zones impinge on developed areas of agriculture in the vicinity of urban centres, the 'mainstream' peasantry commanding greater clout in politics has been impacted. Also, the concerted agitations against acquisition of land across the country threaten to derail the dream mega projects which have been lined up with external investment. This disturbs the government as well as the dominant class and the media fixated on accelerated economic growth. In addition, the current spectre of displacement agitates affected people more because state commitment to equity and social justice in governance, though never an overriding concern, has sharply receded both in rhetoric and action. The projects, even in the public sector, neither offer employment nor land and dignified living conditions as a measure towards rehabilitation. The Narmada case has eroded even the sanctity of the Tribunal Award on allotment of land to the land losers. The acquisition of land for private sector companies has created greater alarm in the affected people. These agencies are not governed by any policy package on rehabilitation, adopt unethical and coercive arm tactics to take possession of land with the government machinery looking the other way and are beyond the pale of accountability. The state is increasingly turning impatient and repressive and less amenable to dialogue and accommodation. The elected representatives are a mute spectator and willing party to these developments. The dismal record of rehabilitation of persons displaced so far provides no assurance that it would be any different in future. While displacement from natural calamities, at least, generates human compassion in the national elite and generosity internationally, development induced displacement, in contrast, does not even cause unease. Rather, it is rationalised as inevitable for achieving national progress and beneficial for the victims of displacement as well. This is the perspective which informs people's perception of displacement.

The discourse on displacement caused by acquisition of land in India has thrown up a number of critical issues which seek to illuminate why this phenomenon occurs and what consequences it entails. These issues touch upon the nature of development, distribution of power, control over life supporting resources, commitment to social justice and equity, and economics-ecology interface. Diverse as these issues are, they have deep inter-connections and can be subsumed under what is termed as the 'Paradigm of Development' whose different facets they manifest. This development paradigm represents the

conceptual framework within which the goals and vision a society aspires to achieve are defined, assumptions on which they rest get articulated, and norms by which they are constructed and translated into policies and programmes are exposed. It has to be related, essentially, to the political economy which provides the ideological underpinnings to it and the social structure which legitimises it.

Paradigm of development

Development is perceived by its protagonists in terms of modernisation, improved standard of living and industrial progress. The route to achieve it lies in the growth of GNP which would generate wealth, raise incomes, and create incentives for investment. This economic growth relies heavily on capital investment and advanced technology to harness existing natural and human resources. The large infrastructure and manufacturing projects emerge as its manifestations. These projects cannot be executed without land which is usually provided to the executing agencies through compulsory acquisition by the government. The displacement of people subsisting on such land has, therefore, been considered as inevitable and unavoidable. This displacement, in the long run, is also considered beneficial for the displaced persons because the existing subsistence agriculture cannot absorb the huge manpower dependent on it. The industrial development would provide alternative and more productive employment opportunities and generate increased income distribution effects. Conservation is another facet of this paradigm of development.

This articulation of development paradigm rests on certain assumptions. One is that 'development' benefits people across society and is, therefore, governed by an inherent of welfare rationality of social welfare. The other assumption is that development and national progress are intertwined. The pursuit of national progress is a superior overarching aspiration and should supercede all other considerations. All citizens should acquiesce in its attainment. Adverse externalities emerging from it should be tolerated as a sacrifice for a worthy cause. In terms of these assumptions, development induced displacement is both necessary and desirable and constitutes a small cost for achieving the higher end of utilitarianism and nationalism.

In a society, characterised by wide social and economic inequalities, 'development' like other political goals is a widely contested notion with sharply antagonistic meaning given to it. This is because development is not a neutral phenomenon with uniformly beneficial implications. Development activities have dissimilar effects on different social groups depending on how they are placed in society and what their interests are. Some may gain from them, while

others may lose. Therefore, the perception of what constitutes development is not the same with all social groups. Both the meaning of development and the route to achieve it are therefore viewed in different terms by different groups. Each social group tends to interpret development in terms of how its interests can be served and how the distribution of benefits would affect it. The articulation of development, as described above, serves the interests of dominant social and economic groups because they are in a position to benefit from it. For those who face the spectre of displacement with attendant adverse consequences, this model is the very negation of development. It deprives them of the ownership of the means of production and access to livelihood and life-supporting environmental resources. The technology it uses displaces/undervalues their labour. The effects it generates are wholly negative for most of them. It causes a spiral of impoverishments, social disruption, emotional trauma and an uncertain future. The reverse flow of benefits from poor to the wealthier sections inherent in it exacerbates inequity. This development can never be beneficial to them.

When this pattern of development is pursued in respect of social groups which are relatively isolated and culturally distinct such as the Scheduled Tribes, it produces a more sinister phenomenon described as 'internal colonialism' (Areeparampil, 1989). In this design of development, the affected tribal people get impoverished, while the 'advanced' sections of society are enriched. The urban centres dominated by non-tribal groups develop as enclaves of prosperity amidst stagnation of rural areas inhabited by the tribes. Its processes lead to the dispossession of tribals from ownership of means of production and deprivation of the products of their labour. The social effects produced by it are observed in the loss of their political autonomy, the break up of their community and the devaluation of their culture. The political overtones of this development are articulated through the slogan of integration and assimilation which is eventually intended to destroy their identity and distinct status. This development virtually reduces them to a sub-human level of existence. In short, this paradigm of development essentially thrives on the progressive underdevelopment and destitution of the displaced tribal people.

The displaced groups give expression to an alternative paradigm of development – the one which strengthens their control over the means of production, enhances access to livelihood avenues, improves their quality of life and uses a technology which values their labour, increases their incomes and provides facilities for advancement which better off sections enjoy (Manch *et al.*, 2005). This redefinition of development implies that its activities should benefit them in the same way as they do to the dominant groups. The costs, if any, of such

development should be equally shared by all groups. Alternatively, where this parity is difficult to achieve despite sincere and strenuous efforts, the losses should be compensated in a manner that balances the benefits derived by the winners so as to achieve the most equitable outcomes to the losers. This brings forth a whole range of ideas and suggestions on how this balance can be achieved, such as minimisation of displacement as against its assumed inevitability, alternatives to compulsory acquisition, replacement of productive assets, provision of stable and assured employment, tangible and continuing share in benefits from projects and a wide range of risk mitigating measures usually defined as rehabilitation. The discourse, therefore, involves a reversal of the prevailing assumptions and logic of the current ideology of development and its replacement by construction of a fair and just paradigm.

The displacement debate also sharply underlines the unequal power relations in society. The power structure these relations produce tends to concentrate decision-making of the government in a small privileged class representing the dominant social and economic groups. The class constituting these groups has wide access to economic assets, knowledge creation avenues, creation and opportunities for advancement. It commands control over resources both economic and intellectual. In short, its power emerges from its position in society and national (and now international) economy. Development policies and structures are a manifestation of this power. In contrast, the larger sections of poor, particularly the more vulnerable sections among them, are denied this access through a wide range of discriminatory and exclusionary practices. In such a situation, the decision-making by the state whether for regulatory or developmental activities is controlled by this small privileged class. This enables decision-makers to take decisions for the whole society which includes those who may be adversely affected by them. These decisions inevitably reflect the premises and logic of their costs and benefits as seen by the decision-makers. The decision-makers assume that the logic and assumptions influencing a particular decision are shared by others as well. That is why development decisions involving displacement never consider possible alternatives which avoid this consequence. Rather, they tend to justify them by arguing that the adversely affected people should make this sacrifice for the larger national progress and advancement of society. This self-serving logic is pursued precisely because they are not the ones who suffer the adverse consequences of decisions. The 'other' paradigm of development, therefore, very eloquently advocates inclusive participation in decision-making by which this inequality of power distribution is neutralised. Those who are adversely affected also have an equal say in the decisions taken so that the conflict of interest are adequately resolved without leaning in favour of any class. Such a participatory decision-

making would inevitably redefine and reconstruct concepts such as progress, social good, larger interests, conservation, nation building, etc. All these concepts are value loaded and their definition reflects the relative power of the person/persons/groups who define them. The alternative sought is a more democratic and participatory decision-making.

The articulation of the alternative paradigm of development by the victims of the existing development process has brought to the surface, what has been latent all along, the issue of control over natural resources (Sharma, 1993, Manch *et al.*, 2005). This issue is of particular significance in the context of the tribal communities which have faced and continue to bear the brunt of displacement. The roots of the debate go back to the colonial times, when the British extended its political power to relatively 'autonomous' tribal societies not exposed to the state formation and consolidated their control over them with governance structures quite alien to their experience. The apparatus of the legal system, institutions and processes of day-to-day administration constituted the essential part of these governance structures. Through these instruments, the colonial government expropriated common property resources and extinguished control of the community over them. This enabled the colonial government to convert forests and some other common property resources into state property. The colonial government also radically changed the agrarian structure and introduced feudal overlords to exercise control over peasantry for revenue maximisation. The next target of control was privately owned land. This was effected by empowering the state to compulsorily acquire it for public purpose.

The post-colonial state retained these structures and policies and even reinforced them to tighten its control over natural resources. Thus, the most vital resources which define tribal identity and are crucial for their dignified survival such as land, water and forests are increasingly taken away by the State with devastating consequences. Therefore, the agitation against acquisition of land is resurfacing the demand that the local resources within the territory by which the community is identified should be controlled by the community rather than by the State. This implies that decisions on how these resources are used in a given area should be taken by the concerned community rather than by the State so that they can ensure that such uses benefit them. This articulation of development is, in short, questioning the essential colonial premise of law and governance that these resources belong to the State which has the freedom to take decisions about their ownership and use. This view is inconsistent with the scheme of the Constitution which mandates special protection to preserve the cultural identity and institutions of the Scheduled Tribes. Community control over natural resources in their respective jurisdictions constitutes the very edifice on which, traditionally, the identity of tribes is constructed and without which they will disintegrate.

This discourse on development has also brought into sharp focus the iniquitous nature and impact of its activities across social groups. This is reflected in the prosperity and advancement for some and the impoverishment and misery for others. The acquisition of land leads to its transfer from people who use it for their subsistence to more affluent sections of society who already have access to productive resources and other avenues of income. This is particularly true where the acquired land is used by corporate agencies for profit-making and by housing societies for providing houses to the better off sections. This resource transfer is contrary to the ethos of a welfare state and several government policies which tend to make social justice as their plank. The stress on growth has assumed overriding priority which creates sharp conflict with the agenda of promoting equity. This contradiction is incompatible with attainment of social justice and is the repudiation of constitutional provisions and commitment to protect human rights (Baxi, 1989). The involuntary displacement is the very negation of the Preamble to the Constitution which focuses on commitment to justice – social, economic and political. It also compromises some Fundamental Rights. For example, the right to reside and settle in any part of the territory guaranteed under Article 19 (1-C) of the Constitution is ignored when people are involuntarily shifted from their existing habitat. The right to live with dignity in terms of Article – 21 also gets violated by the forced deprivation of the means of livelihood and life is supporting resources to those displaced. Right to Equality and Equal Protection is denied because development projects lead to unequal distribution of benefits and suffering. The Directive Principles of State Policy particularly enshrined in Article - 39 (b) and (c) are sidetracked. Besides, special protection provided to the Scheduled Tribes in the Constitution particularly in Schedules V and VI are infringed as development projects lead to eviction of the affected tribals from these areas. The adverse social and economic forces unleashed by development projects force them to migrate to other areas where they disintegrate as a community and lose their identity and benefits as Scheduled Tribes. The displacement is considered 'forced eviction' and, therefore, a gross violation of human rights in terms of the Vienna Declaration and Programme of Action. Since India is a party to this Declaration, the continued large scale displacement constitutes violation of human rights (cited in Thukral *et al.*, 1989). The ILO Convention 107 (1957) dealing with indigenous people to which India is a party is also not observed when such displacement takes place (Mahapatra, 1999). Article 11 of this Convention provides for recognition of collective ownership of land and 12.2 and 12.3 about provision of land to the oustees, both of which have been ignored in the process of resettlement. The displacement, therefore, violates universally accepted human rights of life, dignity and happiness.

The ecology-economics interface subordinates environment to the primacy of economic growth. Nature is repudiated for generation of wealth, goods, and services. The ecological degradation resulting from this distorted priority has emerged as the pervasive consequence of the pattern of development. The alternative uses of land interfere with all elements of environment. They pollute and overdraw water resources, degrade quality of air and damage biodiversity. The soil in the vicinity is impaired affecting its productivity and even fertility. The incidence of reservoir induced seismicity is increased in many dam projects (Kothari, 1996). Development opens up the environment for large-scale commercial exploitation which destroys its values besides generating social conflict with communities who use it for subsistence. The ecological imbalance destroys the existing symbiosis between people and their environment and threatens the survival of those dependent on it. It also leads to irreversible loss of natural genetic diversities evolved over the years. The shrinking of the resource base of an increasingly large number of people causes imbalance in man-nature relationship. It forces people dependent on it to overexploit the reduced environmental space for survival which causes further degradation, reducing its utility for the very communities dependent on it. The deterioration in the local environment also leads to the spread of new diseases unknown to the area (Fernandes and Thukral, 1989, Pandey, 1998). Thus, environmental destruction and social injustice go together. These effects also raise the issue of sustainability of development itself as also its consequences which people have no capacity to cope. The development projects undervalue both social and ecological costs and overestimate the benefits (CSE, 1985). The economics overrides ecology in the calculus of development. The elite centred focus on conservation which has become integral to this paradigm of development delinks communities from their environment. They are perceived as inimical to the preservation of wildlife and the growth of forests. The centuries-old harmony between people and their environment is converted into conflict thereby accentuating social injustice.

Displacement is a global phenomenon rooted in history. Forced displacement of people in India is also nothing new. The displacement on a smaller scale has taken place in different periods of history triggered by the transformation of economy, increase in trade and commerce and growth of urban centres (Mankodi, 1986). The requirement of hunting areas for kings, development of highways, ports and trading activity would have forced existing occupants out of their land. The dominant groups have always used state power to define use of land and have influenced access to it. This social dynamics destabilises those settled on these lands (Parasuraman, 1999). The displacement of tribal

communities from their land by better skilled 'Aryan invaders' pushing them into the interior forests is fairly well-known. But the incidence of such displacement was small and the low density of population permitted the displaced people to retreat to the unoccupied land. It was, however, the colonial rule which set in motion unprecedented displacement estimated at around 3.5 crores (Fernandes and Paranjape, 1997). This resulted from radical changes introduced in the agrarian structure of the economy to suit colonial needs. The colonial penetration of the economy destroyed indigenous textile industry and pushed out weavers from their occupation. The establishment of intermediary tenures in land and forced changes in agriculture impoverished peasants displacing many of them in the process. The extraction of forest and mineral resources, building up of infrastructure and establishment of plantations required control over natural resources. The legal framework to facilitate this control was created by enacting two legislations, one relating to the forests which legitimised expropriation of large areas of forest land for the exclusive use of the state and the other relating to the compulsory acquisition of privately owned land for 'public purposes'. The Forest Act extinguished the existing rights and interests of people in forests and curtailed access of communities to the use of forest resources while the Land Acquisition Act deprived them of their land, the principal source of livelihood. The transition from colonialism to independence did not produce any real shift in this approach of the state to exercise control over natural resources. 'Modernisation' and 'Development' in post-independence India substituted for the generation of revenue for the mother country in the colonial period as the rationale for exercise of this power while the interests of dominant groups replaced the colonial interests. In fact, the government further consolidated its position through expansion of its activities and extension of scope for exercise of power and tightened the existing instruments for this purpose. The onset of the neo-liberal policy regime and the commitment to integrate the national economy with global economic order have unleashed a development pattern which would cause displacement far exceeding the level known so far.

The enormity of development-induced displacement in modern India can be gauged from the scale itself. While there is a lack of reliable estimates of the total number of persons displaced so far, non-official efforts place them between a minimum range of 2.13 - 3.5 crore between 1951 and 1990. The number of such persons from all projects up to 2000 has been put at 6 crore (Fernandes, 2006). This number excludes displacement due to wars, natural and human made disasters or migration caused by economic or technological changes. Of these, around 40 per cent till 1990 were tribals who constituted

only 7.5 per cent of the population and another 20 per cent were Dalits. This showed the specificity of the impact on certain social groups. In addition, lakhs of people have been displaced from land and livelihood owing to the impact of project activities which are not even taken into account for computing the number of displaced persons officially. The magnitude of actual displacement is obfuscated by the absence of a complete survey of such people and camouflaged by the definitional norms to underestimate the cost of acquisition and reduce the responsibility for resettlement. The progressive increase in displacement since independence, according to one estimate, was nearly 2.5 to 3 times as large as the number displaced in 1950. The number of persons displaced per hectare, according to another study, increased from 1.9 during the 1950s to 5.52 persons during the 1980s (cited in Parasuraman, 1999).

The impact of displacement on individuals and communities in its various dimensions has been widely researched and documented. Displacement not only leads to the loss of land and livelihood but also the total disruption of the community support system, social networks and access to social amenities. It causes a 'spiral of impoverishments'. The dimensions of impoverishment have been succinctly identified in terms of landlessness, joblessness, homelessness, marginalisation, food insecurity, morbidity and social disarticulation (Cernia, 1997) besides loss of schooling for children (Mahapatra, 1999) and access to basic public services (Mathur, 1997, Mahapatra, 1999). Owing to overwhelming dependence of the affected people on land (2/3 of the population), displacement caused by impoverishment among the small and marginal farmers, landless labourers and artisans is more severe. The loss of land emerges as the most pronounced cause of it. Other dimensions follow from this determining variable. Displacement had a particularly devastating effect on tribal communities evidenced in forced labour, perpetual indebtedness, loss of self-esteem and breakdown of the social control system leading to alcoholism, crime, suicide, prostitution and delinquency. Tribals virtually get reduced to a sub-human level (Pandey, 1998). Its gender dimensions are equally disconcerting. Women get marginalised both within the family and in the society. They lose income-earning opportunities and a decisive role in the production process besides getting deprived of the access to food, fodder and fuel-wood from common property resources. In the labour market, their opportunities for work get reduced and wages they receive are lower. As a result, their status within the family is lowered and share in the decision-making reduced. In addition, they experience social and sexual exploitation in the workplace. Women lose out in resettlement planning as well (Thukral, 1996, Kothari, 1996, Parasuraman, 1999, Mathur, 2006)^b. Altogether, displacement is a deeply traumatic experience with multiple

dimensions affecting production systems, social network, trade and market connections, and cultural bonding. In case of tribal communities, displacement causes loss of cultural identity which produces stress and mental disorders. Children lose access to schools and network of social bonds (Kothari, 1996, Mahapatra, 1999). The degradation of environment increases morbidity and brings in new diseases.

The intervention of the government against this multi-dimensionality of ill-effects is one of indifference and neglect. This is evident from the dismal record of resettlement and rehabilitation. By the government's own estimates, around 25 per cent of the displaced have been covered by any rehabilitation measures (Planning Commission, 2003). The authenticity of even this claim has never been verified and the quality of this rehabilitation is hardly reassuring to those facing displacement. This implies, nevertheless, that 3/4th of the displaced persons are left to fend for themselves. They become invisible after the acquisition of land and disappear into the destitute urban labour market for survival. No official reports have been prepared about the social and economic status of such people. Studies carried out by non-governmental organisations and research agencies are the only sources of information. This lack of concern in the government speaks of the powerlessness of the displaced persons.

Acquisition of Land

The most striking aspect of the development-induced displacement is the instrumentality of law in its legitimisation. Two instruments are used for this purpose. One is the set of forest-related laws such as the Indian Forest Act, 1927, the Forest Conservation Act, 1980, the Wildlife (Protection) Act, 1972. The other is the gamut of laws for acquisition of land. The Forest Act is instrumental in establishing proprietary rights of the government on forest land and control over forest produce. The enforcement of its provisions leads to the denial of rights of people through processes prescribed for establishing a claim and extensive powers vested in the forest officials to adjudicate on its validity (Ramanathan, 1995). Other forest laws have the effect of displacing forest dwelling communities from their habitat and cultivable land, imposing restrictions on their movement and curtailing their access to forest-based resources. The laws on acquisition deprive them of land which is their only source of livelihood. A large number of such laws have been enacted which include both the central and state laws. These laws have varying provisions relating to the process of acquisition and entitlements of the affected persons. Of them, the Land Acquisition Act, 1894 of the central government is the most widely used for this purpose. The dimensions of this law (other acquisition

laws share broadly the same framework) which have adverse implications for those affected by its use relate to its (a) conceptual frame, (b) norms of applicability, (c) range of entitlements, (d) mode of participation, and (e) design.

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

The issues emerging in these dimensions are discussed in detail.

Conceptual frame

Rationality of State Control Over Natural Resources

The Land Acquisition Act (this is true of other land acquisition laws as well) confines itself to the acquisition and its processes. Its entire focus is on regulating state action to take over private land so as to have complete control over its resource potential. What happens to people from whom land is acquired or those who were dependent on land for various life-supporting activities is not its concern. The scope of law is exhausted once land is taken possession of. The limited concern reflected in its framework for people whose land is acquired is with regard to payment of compensation to them. The law, therefore, tends to redefine the state's relationship with citizens in terms that extinguish their rights, limit their choices and force them to accept consequences that are highly detrimental to their dignified existence. This is achieved by tilting the balance of relationship overwhelmingly in favour of the state. This framework is not only antithetical to democracy but also the negation of humanism (Ramanathan, 1996; Parasuraman, 1999).

The law also distorts the relationship of people with land evolved in the context of socio-economic forces operating in different situations. This relationship took expression in the shape of various uses of land around which rights and interests were crystallised. By vesting in the state the exclusive power to decide what resources are required by it and determine the cost required to be paid to take control of them, the entire set of delicately balanced individual and collective rights, interests and obligations are bypassed. These entitlements get reduced to a single, simplistic and limited relationship expressed in individual ownership of land authenticated by documentary validation. The law, therefore, stubbornly ignores complexity of agrarian relations. The use of acquisition law results in mass scale displacement and causes a 'spiral of impoverishments' to the affected people besides social, cultural and emotional consequences detrimental to them. It is instrumental in facilitating this unjust state action without even recognising the consequences that would flow from it. The framework of law, therefore, is in conflict with the overall framework of social justice enshrined in the Constitution and expressed through various other instruments, national and international, of human rights (Baxi, 1989).

By tending to concentrate powers in the state to the utter disregard of people's interests, the framework has influenced courts' understanding of the problem of displacement and contours of judicial review on the subject. The courts have steadfastly supported and even reinforced state action (Upadhyaya and Raman, 1998). The only responsibility of the state which courts have agreed to examine is with regard to the fairness of compensation paid to the land losers for loss of land. The whole set of problems caused by displacement have been reduced to the single proposition of a compensable claim. The resort to this reductionism is also reflected in the determination of rights and interests in land, mechanism of assessing the value of land and mode of payment of compensation. The objective is to simplify diverse range of agrarian and social issues into propositions that could be conveniently translated in operational terms. In this exercise, many complex issues associated with displacement get excluded from the purview of law for which the state accepts no responsibility. The framework, therefore, is guided by expediency so as not to complicate the process of acquisition itself and permit its easy enforcement and expeditious completion (Ramanathan, 1995, 1996). As a consequence, laws of land acquisition become instrumental in extinguishing rights of citizens and absolving the state of its obligations to compensate for their loss.

The critique of law has, therefore, favoured a radical reform of this framework. The revised legislation should address the problem of displacement in a manner that reduces state power, alter its priorities and reorients its presumptions on

vital issues that have influenced the course of law (Ramanathan, 1996; Parasuraman, 1999). A more democratic and humane law would recognise upfront mass displacement and its consequences resulting from the acquisition of land as a primary focus of attention and would consequently incorporate the state's obligation to mitigate them. It would also incorporate processes which realistically bring out the whole set of individual and communal rights and interests attached to land and the manner in which they would get recreated in resettlement arrangements failing with their loss adequately compensated and their holders empowered to have them enforced.

Eminent Domain

Two concepts provide the compelling rationality to the overarching conceptual frame of the law on acquisition. One is the doctrine of 'Eminent Domain' which underlines the juristic basis for exercise of sovereign power (though never mentioned in the law) and the other is the 'public purpose' which provides the moral justification for its use.

In the description provided by Black's Law Dictionary the doctrine of 'Eminent Domain' is embedded in the notion of sovereignty which is one of the defining attributes of a state: it is "the highest and most exact idea of a property remaining in government or in an aggregate body of people in their sovereign capacity" (cited in Ramanathan, 1995). It lends juristic rationality to the state's control over natural resources within its territory. The rights and interests of individuals or groups exist only with its authority. This implies that the "right of the state or sovereign to its or his own property is absolute while that of the subject or citizen to this property is subject always to the right to take it for public purposes" (cited in CPNCR, 2001). In Wharton's Law of Lexion, it is 'the right which a government retains over the estate of individuals to resume them for public use' (ibid). This implies that the citizen holds his property subject always to the right of the state to take it for 'public purposes'. This power extends to the permanent, temporary or partial acquisition of private property. As a consequence, the right of a person or a community to resist state action for compulsory acquisition of land is obliterated. The limited space conceded to the citizens is the right to be heard and right to claim compensation for the loss of land. The doctrine was part of the common law in England. It was applied to the colonies and later to India coming under colonial occupation irrespective of the prevailing indigenous practices regarding occupation and use of land. The government after independence, did not change the colonial doctrine of Eminent Domain as the basis for compulsory acquisition of private land. Rather, it has used it extensively for further eroding the rights of individuals and communities over land and other natural resources.

This doctrine has to be understood in conjunction with the concept of property introduced by the colonial government to define the rights of citizens in land for comprehending its implications. The traditional view of rights in land was guided by the recognition which the community bestowed. The state respected it. The colonial view was derived from the principle expressed in the Latin word 'terra nullius' which implies that the land (property) which is not burdened by any validly acquired ownership belongs to no one and hence accrues to the state. The ownership implied here is the one conferred by the state or the law enacted by it. This principle was used by the colonial government to convert vast stretches of forest land into state property and to de-recognise rights or claims of individuals or communities over them which had no backing of an authenticated document issued by a competent authority (Roy Burman, 1992; Das, 2006). The principle is used to curtail rights and interests over forests and other common property resources customarily enjoyed by communities. The same logic is used to ignore occupation of forest/community land by individuals who have made it cultivable through their labour. No right accrues to such individuals in the absence of validation by a competent authority or entry in the land records prepared by the government which signifies this recognition. Such occupants get excluded from claiming compensation if their land is acquired.

The legal rationality of Eminent Domain creates such a tilt in favour of the state that it becomes immune to any challenge in the courts. The resulting skewed balance between state power and individual/community rights is untenable in a democracy and therefore, unacceptable to citizens. The discourse on the acquisition law, therefore, has strongly advocated that the doctrine of Eminent Domain should be abandoned and citizens be given the right to challenge state action, at least, in situations where its consequences are patently unjust. This could be done by empowering citizens to contest the use of state power and to refuse to part with land in specified situations. With regard to the concept of 'rights' as defined in terms of valid ownership on the basis of Anglo-Saxon law, the critics of acquisition law advocate that the rights of individuals and communities in forest and other common property resources based on customary use and traditional practices should be recognised and the government should either replicate them in resettlement by providing land or compensate their loss when the land bearing such rights is acquired. Similarly, loss of other rights and interests subsisting on land which are not accompanied by any legal proof also need to be brought into the ambit of compensation. Appropriate entitlements for the holders of such rights and interests should be created for this purpose.

Public Purpose

The doctrine of Eminent Domain used by the government to representing state power takeover privately owned property is rationalised on the basis of utilitarian consideration which lends ethical defence to it. This moral basis is provided by the stated objective that it would serve the interests of a large number of people defined by the phrase 'public purpose'. The difficulty is that the 'public purpose' has not been defined in the Land Acquisition Act, 1894, but only illustrated by categories of activities which would constitute it. This has permitted the government to use it for any purpose considered expedient. The colonial government used this formulation only for the requirement of the government and its agencies. This continued after independence as well. But, in 1984, the application of 'public purpose' was extended to the needs of private companies operating for profit. Besides, the colonial government limited its application to provision of public utilities, creating infrastructure, requirements of defence and governance. After independence, the scope of activities has widened extensively to include manufacturing, trade and commerce. This flexibility has permitted the government to enlarge the scope of acquisition without facing any judicial scrutiny. The law, as interpreted by the apex court, does not require the government to establish the public good involved in specific purposes of land acquisition. Rather, it has reinforced the power of the government in this regard and justified it when it was applied to acquire land for companies earning profit (Upadhyaya and Bhavnani, 1998) Even the inconsistency between the actual and the stated purpose has not been considered as an infringement of 'public purpose'. This has enormously increased the discretionary power of the government to take over life-supporting assets of individuals. The problem of the affected people is compounded by the fact that the right to property is not a Fundamental Right any more but only an ordinary right in the Constitution. Its abridgement by the government through a procedure established by law cannot, therefore, be challenged on the ground of infringement of the basic structure of the Constitution. Though acquisition of land deprives people of their established modes of livelihoods and various life-supporting benefits, the Fundamental Right to life guaranteed under Article 21 has not been creatively interpreted by courts to limit the power of the government in this regard or even to cast an obligation on it to provide viable alternative livelihoods to the affected persons. The other difficulty is that the Land Acquisition Act does not provide a framework for acquisition of land for private purpose which could be distinguished from the acquisition for public purpose. This tends to increase the demand for land enormously which is

catered to by using the existing undefined but inclusively illustrated formulation of public purpose.

Not surprisingly, therefore, the discourse on land acquisition has severely attacked the existing provision. The alternatives advocated focus on two main objectives.

- (a) 'Public purpose' must be precisely defined so that it is possible to comprehend its limits and scrutinise the propriety of its use;
- (b) The affected persons should have a right to challenge its application in specific cases of acquisition in order that courts can adjudicate the propriety. The decision of the government

With regard to (a), the following are some of the alternative formulations,

'Public purpose' should be restricted to activities related to national security and provision of public utilities.

- 'Public purpose' should cover only activities which come within the purview of the Directive Principles of State Policy.
- 'Public purpose' should be limited to public welfare activities funded and implemented by the government.
- 'Public purpose' should not be defined in terms of the ownership of the agency requiring land since public sector undertakings also engage in commercial activities and private companies are now entrusted with the delivery of public services.
- 'Public purpose' should be defined by taking into account the specificity of the purpose for which land is required. Whether 'public purpose' is served by a specific proposal should be decided by the legislature, at least, in respect of large projects.
- The application of 'public purpose' should exclude land in tribal areas. It should harmonise with the protective laws for preventing alienation of tribal land and rulings of the apex court regarding them.

With regard to (b) there is a fair degree of consensus that the right of the citizen to challenge the acquisition of land for 'public purpose' should be embedded in the law. Those working with SCs/STs advocate that these groups may be provided free legal aid to use this right where acquisition of land is perceived to hurt their interests.

In the recent past, the discussion has also extended to exploring alternatives to land acquisition. One of the suggested alternatives to outright transfer of land

is transfer of land on lease with provision of monthly lease rent which is subject to periodical revision. This has been particularly advocated in the case of acquisition of tribal land. The alternatives suggested in the acquisition of land for urban development include conversion of ribbon development into corridor development, providing public services through implicit acquisition, as in plot shrinking under town planning schemes and in the use of "Transfer of Development Rights" (Morris and Pandey, 2007).

There is a great deal of agreement on the need for keeping land requirement of companies out of the purview of 'public purpose'. A separate framework for acquisition of land by private agencies may be provided for this purpose with specific obligations cast on the requiring agency to rehabilitate the displaced persons in the same manner as the government should be required to do in the case of compulsory acquisition of land. The government should, however, create arrangements to protect poorer persons due to the unequal bargaining position of parties and provide for fixation of a minimum threshold of land price in case of each transaction to be done by the collector of the district. From the perspective of private sector land requiring agencies, it has been argued that the government should develop a well functioning land market for this purpose, remove restrictions on purchase and sale of land, relax constraints on land use, reduce transaction costs and provide the framework of register which records the intent of requiring agency to buy land privately. In short, the land market should be allowed to operate freely (Morris and Pandey, 2007).

Norms of Applicability

The Land Acquisition Act, 1894 notwithstanding the absolute power it confers on the state to control natural resources also balances it by checking arbitrary exercise of this power. This is provided by the requirement that the use of this power would have to be in accordance with the conditions laid down in it. These conditions have two dimensions – one relating to the procedure through which acquisition would be accomplished, and the other, more weighty one, relates to the entitlements of those losing land. The process and entitlements both identify categories of interest holders who would have a locus standi to use these provisions and articulate their interests. These categories are determined by the meaning given to certain terms used in the Act. The terms, in this context, are 'land' and 'person interested'. The eligibility for entitlements and the government's obligation to meet them are restricted to persons identified on the basis of these definitions.

'Land'

The definition of 'land' in the Act does not convey the specific categories of land which would come within its ambit. But the expression is defined to include benefits arising out of land and things which are attached to the earth. This has merely elaborated the expression through an inclusive explanation of sorts. This explanation does not make any reference to the ownership, occupation or use and the authority bestowing this status. But the practice of land acquisition has expressly linked it to the private ownership of land which is supported by law and valid documentary proof to this effect. The existing practice tends to exclude land which is not privately owned but extensively used by the village community in a defined territory. The sanctity of such use is founded in customary practices and traditions. The current interpretation of the expression 'land', therefore, does not take into account the forest land, common land, government/public land and other common property resources even though extensively used by individuals and communities for drawing various benefits. It also tends to ignore interests, privileges, uses, concessions, occupancy, etc on land which are not backed by a right of occupancy recognised by tenancy laws and a supportive document. As a result, the existing practice of land acquisition tends to include only those claims on land where the claimant has a title or recognised right to such land. Accordingly, individuals and communities having interests, privileges, uses, concessions and occupancies on forest and other common lands are excluded from the purview of compensation claims for loss of these rights or for their replacement in the resettlement plan prepared by the government. These different categories of common property resources are considered the property of the government and, therefore, the government determines the terms of their transfer to the requiring project agency. The compensation, if any, paid by the requiring agency accrues to the government. The lack of clarity in the existing definition has resulted in extinguishing vital interests of a large number of people and the 'community' they collectively represent on the admissibility of claim for compensation in respect of such lands. The situation creates a duality of treatment in respect of property rights. As a result, in relation to land, two types of citizens exist; those governed by tenancy laws and those governed by forest laws or other customary practices. The latter do not confer any title to land however long the claimants may have occupied/used them (Singh, 1996). It has, therefore, been proposed by the critics that the expression 'land' occurring in the Act should be elaborated to include all types of land where individuals or communities have certain interests irrespective of whether there is valid documentary proof regarding them. Appropriate methodology should be used to assign values to the loss of such interests for computing compensation.

‘Person interested’

Like land, the expression ‘person interested’ has not been precisely defined in terms of interests the identification of which will qualify an individual to this status. The norm for inclusion in the category of ‘person interested’ is related to the status of eligibility to claim an interest in compensation on account of acquisition of land. This skirts the issue of a precise identification since only ‘person interested’ can lay claim to compensation. The definition is silent on what constitutes an interest and, therefore, does not illuminate the process of identification of such persons. But the practice of acquisition has applied this expression to only those persons whose rights are entered in the record of rights of the concerned village. Therefore, the interpretation of ‘person interested’ boils down to owners/title holders of land as the land records, by and large, do not record the existence of tenancies and other interests, privileges, uses, concessions, occupancies on land even where recognised by law. Forest dwellers to which category most tribals belong have no occupancy rights to land or habitat since they are governed by forest laws and are, therefore, not covered by the definition of ‘person interested’. This duality of property rights has no legal or constitutional justification and, therefore, most discriminatory (Singh, 1996). It also excludes from consideration agricultural labourers, artisans, fishermen, etc. who use land owned by others for cultivation under different arrangements, homestead facilities and other life-supporting activities either on a customary basis or by way of oral contracts. Such interests are usually not reflected in the records of rights or backed by legal sanction/ documentary proof. In this manner, a large number of people who suffer loss of livelihood and access to life-supporting benefits on account of acquisition of land get pushed out of any consideration for compensation. Land records typically fail to insert these interests because of strong opposition from landowners and collusion of revenue bureaucracy with them. Consequently, despite being displaced, these categories of persons are not considered as ‘persons interested’ to claim compensation and as ‘persons affected’ for the purpose of rehabilitation, if any. This section of displaced persons becomes totally invisible in the framework of land acquisition and resettlement operations even though they suffer most due to loss of livelihood and life-supporting benefits. The critique of land acquisition law has, therefore, strongly castigated the deliberately imprecise definition and iniquitous nature of its interpretation. The alternative proposed is to include all those persons who suffer displacement on account of intended acquisition of land, i.e. those who depend on the said land for access to livelihood and other life-supporting benefits whether on a customary basis or by way of any other arrangement.

Displacement is a complex phenomena. It is also not a one time phenomenon related to the land acquisition only. The location of a project leading to land acquisition may displace individuals and communities dependent upon such land but the project itself over a period of time tends to displace a much larger number of people whose lands were not acquired. This is because of numerous pressures generated by the project activities on people living in its vicinity to part with their land or depriving them access to common property resources. This happens because such projects bring in a large number of immigrants to the area who tend to push out local people from their existing vocations and take over their assets. They also aggressively compete with the locals for access to the common resources. This phenomenon is termed as ‘secondary displacement’. Those suffering from secondary displacement do not come within the purview of any compensation scheme or rehabilitation plan. They simply get eased out from their land, homes, livelihoods and access to other benefits without any relief from the government or the project agency. Critics of acquisition law, therefore, strongly advocate that persons so affected by the project should be brought within the purview of rehabilitation. This implies that the government, while preparing a plan for rehabilitation of those directly displaced from land, should also make provision to address the needs of those who may experience secondary displacement on account of the project activities over a period of one or two generations.

Range of entitlements

The Land Acquisition Act provides for payment of compensation to those who have an interest in the acquired land. This is the only substantive entitlement which the government is obliged to discharge. The payment of compensation is intended to reduce hardship caused by the compulsory acquisition. But there are several aspects of the scheme of compensation which cause injustice to the persons affected. First, the connotation of compensation in the law has a limited meaning. It is equated with the value such land would fetch in terms of money when sold or the notional value of land in the market. Additionally, a solatium amount of thirty per cent of that compensation is paid to reduce injustice caused by the vagaries of the market. The compensation amount so paid does not make up for the whole range of losses, social and economic resulting from forced eviction. Social losses relate to, among others, social disruption and emotional trauma suffered by the affected people. No value is attached to these losses in the computation of compensation. The social and cultural impact of displacement has simply been ignored in the scheme of compensation. It

has been externalised. The loss of land is primarily conceived in economic terms as loss of income derived from its cultivation. Even when land is viewed as economic loss, the notion of compensation does not include in it the loss of access to common property resources the benefits of which cover a sizeable part of the income of the poor. It ignores multiple life-supporting facilities obtained by people from these resources which, if purchased from the market, would require additional income. Thus, as a reparation for economic deprivation caused by the loss of land, the notion of compensation in law is inadequate. The market value which constitutes the basis of its determination cannot replace the land or benefits forgone. The law has, therefore, been severely faulted for this inadequacy as also its unfairness in ignoring multiple losses.

Secondly, the law is narrowly fixated on the individual title holders of the land as its valid claimants. It does not recognise the existence of a collective entity called the 'community' which is more than the sum total of individuals with interests of its own. The law excludes from its purview loss of rights collectively enjoyed by the affected persons as a community and, in the process, repudiates the social environment and tradition built over centuries.

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

The other aspect of the scheme of compensation relates to the method by which it is determined. The law provides that the compensation would be computed on the basis of the 'market value' of the land. The 'market value' has not been defined in the Act. Only matters to be considered and excluded for awarding compensation have been outlined. This leaves the government with the freedom to devise its own method of determination of the 'market value' which is usually worked out on the basis of sale/purchase transactions. If land transactions do not generally take place in an area, an imputed market value is worked out. One method of doing this has been to capitalise income for a specified period (usually 15 years) from the concerned land. Where land market exists, the practice of the government with regard to the determination of market value is based on an average of the registered transactions (sale/purchase) of a similar quality of land in the vicinity of the land acquired over a period of 3-5 years. This practice is unjust for several reasons. It does not recognise the imperfections of the market. It assumes that the land market is fully developed which is not so in India. The other presumption is that the transactions have taken place between willing buyers and sellers, which in the case of acquisition of land is not true. It also supposes that buyers and sellers are equal in terms of knowledge, market information, staying and bargaining power and urgency. This is usually not so. The transactions arrived at between parties in such a situation cannot reflect the correct market value. Besides, land valuation in official transactions are typically undervalued so as to avoid the registration fee and other taxes. The value of land is also affected by many regulatory restraints and control over use such as zonic restrictions, imposed densities, use for non-agricultural purposes (Morris and Pandey, 2007). The laws protecting Scheduled Tribes prohibit any transfer of their land to non-tribals.

But the more fundamental objection to the determination of market value lies in vesting the power of valuation in the government. The value of land is solely decided by the government which is an interested party in the transactions involved in acquisition. This assessment is not carried out by an independent agency or professional valuers (Morris and Pandey, 2007). The practice is considered both iniquitous and undemocratic. It is iniquitous because the market value undergoes radical upward revision after the land is transferred to the project agency. A vast gap is thus created between post and pre-acquisition value of land. As a result, the benefits of appreciation in value of land after acquisition entirely go to the transferee. The restrictions on buyers other than farmers to obtain agricultural land have an effect on depressing its price. The natural resources tied to the land such as underground aquifers, minerals, etc are not valued in this arrangement as the government claims sole ownership of such resources. The upshot of these arrangements is that the valuation reflected

in market transactions do not represent even the real market value of that land not to mention the inappropriateness of the market value criteria itself for determining compensation amount. Not surprisingly, therefore, the discourse on the subject has thrown up a number of alternative suggestions to do justice to the displaced persons.

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

Mode of Payment

Yet, another dimension of the scheme of compensation is the mode by which it is disbursed. The Land Acquisition Act, 1894 does not specify any mode. The existing practice is in the form of cash compensation and is now virtually the only mode though other modes are not barred. From the view point of the government, it is the simplest method of discharging its responsibility and the cheapest in terms of the cost of acquisition and hence the preferred route. But this mode of compensation is beset with many difficulties. Its narrow connotation implies that the various dimensions of suffering associated with

displacement are equated with the loss of land as an income-generating asset. The underlying assumption, therefore, is that the price paid for this loss satisfies all dimensions of land loss. "Implicitly it is also assumed that land is a commodity, that property rights over such land are well defined, that a market for land exists and that market prices approximate the scarcity value of the land to society" (Goyal, 1996). None of these assumptions may be true for some areas and some of them may be untenable for many areas. Secondly, cash for land is intended to facilitate its investment in procuring alternative land or acquiring some other productive asset so as to replace the existing system of livelihood. But this depends on the adequacy of compensation amount, the use to which money is put and the skills for making a sound decision in this regard. It has already been mentioned that due to the prevailing practice of undervaluation of land, the compensation paid is inadequate for either obtaining alternative land of the same productive potential in the area of relocation or any other productive asset capable of generating adequate income. But what causes greater anxiety is the incapability of most people to prudently invest in land for building an alternative income-generating source. Except for a small category of large landowners or those who are already settled in other vocations, the capability of others to use cash for income-generating activities does not exist as several studies have brought out. Usually, recipients of cash compensation end up by either investing it in the construction of houses or in meeting various social obligations or simply using it for consumption needs in the absence of viable livelihood opportunities. In the case of tribes, disbursement of cash compensation has proved to be an unmitigated disaster. Tribal displacees are 'characterised by barter economy and kin centred society which can hardly cope with intrusive and exploitative money economy and individualisation, urbanisation and commercialisation of relations which almost blows them off their feet' (Mahapatra, 1999). Since they have neither experience in handling large sums of money nor capability to invest it productively, vested interests attempt to squeeze this amount from them by luring them to buy useless consumer goods and at a cost higher than their price in the market (Mathur, 2006)^{a&b}. Besides, a large majority of people dependent on land – tribes are certainly among them – are ill-equipped to shift to other livelihood options in the absence of requisite skills, knowledge and experience. This may also be true of displaced persons from the Scheduled Castes. The payment mode is also riddled with corruption even when executed through cheques. Project agencies have been found insensitive to address these concerns. The critics of cash compensation have, therefore, strongly advocated in favour of the government taking over the responsibility to use this cash amount for procuring alternative land of equivalent productivity potential,

at least, for the tribals. Some state laws have envisaged an arrangement under which the state could mediate in arranging alternative land from the compensation amount. If the cost of procured land is higher, the deficit could be realised from the beneficiary in instalments. The critics have, however, urged that the project authority should meet this deficit.

The second alternative is to provide land for the land lost. This is the most favoured suggestion in advocacy literature. It facilitates quicker and sustainable resettlement of the affected persons. The replacement of land also helps rebuild, to some extent, non-economic aspects of social life. In case of tribals, this alternative is overwhelmingly recommended as it neutralises distortions and externalities reflected in the market value basis of compensation determination. Policy makers, however, disregard this option due to the non-availability of sufficient land for this purpose, even if this arrangement is restricted to displaced tribals. There is also a strong reluctance on the part of the government to acquire additional land for this purpose since it would lead to a spiral of acquisitions. The proposal regarding purchase of land from the market with the compensation amount awarded to the displacees also does not find favour with the government as it may be difficult to obtain sufficient land in a compact area. The other option is to locate appropriate pieces of land at different places for assignment to individual households. This would disintegrate the entire community resulting in loss of social capital besides creating problems of adjustment for allottees with the host community. It may also be difficult for the government to detect encumbrances or disputed claims on the land so procured. The detection of such claims later may involve the beneficiaries in litigation and worse. These difficulties apart, state governments have been disinclined to undertake the responsibility of identifying alternative land and willing sellers for this purpose. Even when they are sympathetic to the proposal, they tend to shift the responsibility for searching alternative land to the beneficiaries themselves who would neither have the information and knowledge nor the bargaining power to undertake this onerous task. The assignment of government land to the displacees could also be problematic if supplementary measures are not taken for its utilisation. In a very few cases, where alternative land was provided by the government in the resettlement arrangement, it was of poor quality. The beneficiaries could not make productive use of it in the absence of infrastructural and input support. These constraints notwithstanding, land for land as a compensatory mechanism remains the most effective method of rehabilitating displaced lives particularly for tribal displacees. Degraded forest land could have served as a site for such rehabilitation as it was done in some cases in the past. However, the Forest Conservation Act- 1980 has foreclosed this option.

The third suggestion by way of a substitute to cash compensation or a supplement to it is in the form of durable employment in the project. In public sector establishments, this mode was in practice in some PSUs during the earlier phase of acquisition of land. In addition to cash compensation, one member of the family losing a specified area of land was entitled to this employment appropriate to his level of skills and capacity in this scheme. But its enforcement brought out many distortions and inadequacies. Firstly, only a limited number of families losing large areas of land were made eligible for this benefit. This left out a substantial number of small and marginal land losers from the ambit of this benefit. Secondly, the landholdings are usually sub-divided among the major sons but the land records continued to bear the name of the father as the head of the family. This was and continues to be the tradition in tribal society during the father's lifetime. The benefit of employment in the circumstances accrued only to the eldest son leaving others uncared for. The employment scheme created friction within the family. It produced intra-family differentiation in the egalitarian tribal society. In case of tribal displacees, even those few who could get employment were later replaced by non-tribal aspirants citing flimsy ground such as lack of work ethics, absenteeism, etc. Thirdly, this provision could be taken advantage of most effectively by better off sections among displaced persons. A large number of displacees belonging to the weaker sections could never get this employment despite their eligibility as per norms due to the machinations of vested interests, collusion of project officials, corruption, fraud, impersonation. In 1986, however, this provision was abandoned because of the perceived excess manpower in public sector organisations affecting their viability. Currently, no agency for which land is acquired commits itself to provide employment to any displaced person. The utmost they promise is that if vacancies exist and candidates from the displaced families have qualifications laid down for a specific post, they may be given some weightage in the overall norms of selection. But the majority of displaced persons, particularly those belonging to the poorer sections and vulnerable communities, would not qualify for claiming such a preference. Besides, in the current pattern of the economy, establishments, public and private, all over the country are engaged in reducing their manpower by using capital intensive technologies and cost-cutting measures. This inevitably implies a leaner establishment. Therefore, there is little scope for employment opportunities arising in projects for most displaced persons, particularly in the unskilled or semi-skilled categories of manpower. The project agencies, at best, could be prompted to provide skill development facilities. Experience, however, shows that such facilities are sub-standard, skills provided are irrelevant to the job market and of poor quality. As a result, the candidates acquiring skills provided by projects were no match to more qualified competitors. In the absence

of subsistence allowances, displacees from poorer sections found it difficult to join such training courses in any case.

The fourth view floated in the discourse is for provision of a standard of living to the displaced persons comparable to the pre-displacement level, if not better. This principle has been included in the World Bank guidelines for resettlement but the focus seems to be primarily on income restoration or livelihood replacement. While this consideration is definitely important to tide over impoverishment resulting from displacement, by itself, in its narrowly interpreted meaning, the alternative would be inadequate to meet different life-supporting needs that were available to the displaced persons before acquisition of land. The more comprehensive conception of 'standard of living' would, in addition, necessitate provision of public services – infrastructure, public utilities and institutional support. Both livelihood replacement, civic amenities and infrastructure backed by an institutional support system would be required to meet the compensatory needs of the displaced persons.

A fifth option is also proposed in some quarters. This is termed as the bargaining approach which implies that the contours of compensation inclusive of resettlement and rehabilitation should not be decided a priori by either the government or the project authority in a top down manner. This should emerge from negotiations with the collective organisation of displaced persons which should exert pressure on the project authority (or the government) and influence the norms and content of the compensatory arrangement through bargain (Goyal, 1996). But this approach is difficult to translate into tangible gains for the displaced persons simply because of unequal power relations between the government (backing project agencies) and the affected persons. Besides, the rural communities are fragmented on grounds of caste, religion and interests which would make it difficult for a strong collective organisation of displacees to emerge and get sustained support from its constituents. The government could easily manipulate the social divides to impose its scheme on them. These tactics have been used in several cases. The bargain approach is also fraught with wide variations in the compensation package depending on the status and clout of displaced persons in different projects. A package emerging from such a bargain would militate against equality of treatment and is against the overall interests of the displaced persons. In the existing situation, when most of the displaced persons cannot even get a copy of the notification conveying the intention of the government to acquire land, this alternative remains an academic option only. Therefore, of all the alternative modes of compensation proposed, the one regarding land for land, at least for vulnerable groups such as the STs/SCs, is the most appropriate. It is also the most effective option in

combination with the standard of living approach as a part of the larger compensatory-cum-rehabilitation plan.

Mode of Participation

The only antidote to arbitrary action in the law on acquisition is its all embracing frame of rule of law (Ramanathan, 1996). It is manifested in the procedure prescribed for acquiring land and the implicit quasi-judicial nature of the proceedings to satisfy the needs of transparency. The acquisition process provides a modicum of participation to persons likely to be affected. The participation is, however, limited to raising objections/ contesting the proposal of acquisition and, later, to submission of views on the quantum of compensation sought. This small space for participation is further restricted by the definition of 'persons interested' and the practice of identifying them which leaves out a large number of those affected from such participation.

Limited as this participation is, its mode renders even this opportunity dysfunctional to a large number of eligible participants. An important aspect of participation is the access to relevant information. This access is sought to be facilitated through issue of notification for conveying the government's intention to acquire a specified land and issue of notice to 'persons interested' for eliciting their claim to compensation. Both these modes turn out to be ineffective due to the process adopted to convey relevant information. The provisions are also outdated as the role of panchayats in dissemination of information has been left out. Thus, the majority of those affected by acquisition have neither access to information required nor have the capacity and resources to 'participate' in the proceedings. Besides, formal records of acquisition proceedings contain very limited information on decisions taken and factors influencing the process of making these decisions. There is minimal effort to ensure reach of information to the affected persons and create an enabling environment for them to express their views much less to have a re-look at the proposal for acquisition in the light of concerns expressed by them. The procedural formalities are observed as unavoidable rituals so as not to affect the legality of proceedings. More fundamental is the absence of participation in defining and establishing rights and determining the design of compensation. The elements of participation relevant to people are therefore missing from the law.

The critique of the Land Acquisition Act has brought out the inadequacy of existing modes of participation and has advocated that:

- Persons likely to be affected by the intention of the government to acquire land for a project should get all relevant information in sufficient detail including the gist of the project report, evaluation of non-displacing/least

displacing alternatives, rationale for the quantum of land and site of the project, social and environmental impact assessment, plan for resettlement and rehabilitation in a language that they understand. The duty should be cast on the land acquisition authority to provide this information and in a timely manner desired by the affected persons.

- A full-time official should be positioned in the project area for furnishing any information considered relevant by the interested persons. He should make visits to the affected habitations, answer their queries and satisfy their doubts and apprehensions. He should also be responsible for obtaining the informed consent of the *gram sabha* to the acquisition proposal. Any attempt to obtain consent through threat, coercion or fraud should be a punishable offence.
- Panchayats should be used as a forum for dissemination of information, collective deliberations, organising *gram sabha* meetings and for liaison with the project authority.
- Institutionalised public hearings should be held by the land acquisition authority on issues agitating the affected people as a facilitating mechanism for participation and democratic decision-making.
- A committee should be formed at the project level in which besides district and project officials, affected persons should be represented. This should serve as a forum for democratic decision-making to resolve problems relating to the land acquisition faced by people.

Design of the Act

Colonial laws like the Land Acquisition Act and the Indian Forest Act were essentially enacted to serve the commercial needs of the empire. This required control over natural resources, curtailment of pre-existing rights of people in them and institutional arrangements for their management. While the Indian Forest Act achieved this objective by establishing proprietary rights over forests and their produce, the LA Act is designed to strengthen state power to do the same in respect of private land (Parasuraman, 1999). In both cases, the colonial government was not bothered about displacement and impoverishment suffered by people from the enforcement of these laws. Since the government has continued to use the same instruments to pursue its development and conservation agenda after independence the application of these laws has displayed the same lack of sensitivity to people's interests.

In respect of the Land Acquisition Act, the following characteristics illustrate this view.

- a) The Act re-defines the relationship between state and people on the one hand, and between people and land on the other. The first is conveyed by vesting absolute power in the government to acquire land with no choice given to the people to decline or resist it. It is also reflected in the total flexibility available to the government to define 'public purpose' to justify use of this power. The freedom to acquire land partially or fully and even to cut short the processes for acquisition in case of urgency are also features of this relationship. This enables the balance of relationship to tilt in favour of the state. The individual is reduced to a passive entity who has to carry out the order. The liberal underpinnings of a modern democratic state are repudiated in this arrangement.

The second is implicit in the notion that the relationship between land and people would be governed by norms laid down by the state and would supersede relationships evolved over the years through traditions, customs and usage. A valid relationship between people and land qualifying for recognition in law is the one authorised and sanctified by the government. The diversity of relationships built around land over centuries receive no consideration. The other dimension of the relationship between the land and the people has been conceptualised in essentially 'economic' terms, i.e. land as a productive asset for income generation. This view tends to ignore the 'cultural' dimension of land in the perception of people who regard it as an instrument bestowing status, power and a sense of belonging. In the context of the tribes, land relates to their 'identity' and spiritual moorings. For people, the latter view takes precedence over the former as land continues to be held even when it ceases to have 'economic' value. The uni-dimensional interpretation of land as an economic asset is also partial and inadequate and fails to capture the life-supporting multiple benefits that land provides to the people. The law considers it as a freely tradable commodity which is far removed from people's understanding of it as a source of subsistence and insurance against adversity. This redefinition of relationship, therefore, fails to capture the multi-dimensionality of loss when it is acquired and falls far short of providing an adequate basis for compensating the loss.

- b) The second feature of the design of acquisition law is that it places itself in a pre-eminent position vis-à-vis other laws because it supercedes them when it is applied. For example, the Constitution provides a host of measures for STs to protect them against the onslaught of social and economic forces to ensure their dignified survival. Laws have been enacted in various states to prevent land held by tribals from being alienated to

non-tribals. Certain areas with concentration of STs have been carved out as scheduled areas where restrictions have been placed on land use and transactions which may have the effect of disturbing their existing control over natural resources and displacing them from the area as a result. This has also been reinforced by the Supreme Court in *Samatha vs State of Andhra Pradesh* (1997). A special dispensation has been created for strengthening community's control over natural resources in the scheduled areas. PESA (Panchayat Extension to Scheduled Areas Act), 1996 is the latest enactment of such empowerment recognising thereby a local governance structure different from other areas. When the LA Act is used to acquire land located in these areas and belonging to STs, these protective arrangements simply get ignored. The LA Act assumes primacy, priority and overriding character. It becomes a superior law. The constitutional scheme gets nullified with disastrous consequences for the affected people (Ramanathan, 1996 Parasuraman, 1999). This is justified legally on the ground that the LA Act is a central law while protective legislations are state laws (state laws on acquisition of land, where existing, operate in the same manner and ignore protective land alienation laws) and morally on the ground that 'public purpose' supercedes 'individual' or 'group' purpose in laws enacted for the tribes. The inherent inequality is evident in the arrangement because such laws may still apply to non-tribal individuals but the government gets exempted because of its superior power and moral legitimacy. The whole ideology of protection which intentionally provides a different treatment for STs, particularly in terms of their rights in and the control over land, is negated by the dominant law of acquisition. The tribes have to be content like non-tribes with a mere claim for compensation.

- c) The third dimension of this design is reflected in its propensity to obliterate the existence of the 'community' as a distinct social entity. The law superimposes an understanding of rights and entitlements which only individuals can possess and are, therefore, entitled to be dealt with in its processes. Its formulations conceive of only 'persons'/individuals which can have interests in the land that is being acquired. The colonial framework of jurisprudence underlying it ignores the identity of a collective entity like 'community' with rights of its own. Inherent in this understanding is a failure to comprehend and, therefore, recognise that 'a community is more than simply the sum of individuals. It is a social body with structures and networks with common assets and public social services.' (Cernea, 1999). The law, therefore, fragments community into individuals, perhaps, with the objective of simplifying the acquisition process and computing

compensation claims. This view of social structure and relations, alien to the Indian social formations and particularly the tribal social organisations may have been adopted to avoid recognising group rights so as not to sanctify customary rights and practices which may dilute state's control over forests and other common property resources. The scheme of law evidently reflects an unwillingness to deal with the complexity of intangible group claims. The 'individualisation' of existing diverse entitlements in law is, therefore, imbued with the intention to extinguish certain rights in the mechanism of settling compensation claims and to escape responsibility for restoring the 'community' in the resettlement process (Ramanathan, 1996 Parasuraman, 1999).

- d) The fourth facet of the acquisition law is observed in its approach to reduce rights and interests into a claim for seeking compensation. In a predominantly agrarian society like India, many rights and interests in land have emerged from customary practices, some of which in the case of private land may even have a degree of reciprocity. These rights and interests are not backed by any legal instrument though they have featured in social science literature. It, therefore, creates difficulties firstly in establishing the sanctity of these rights deserving recognition on par with ownership rights and, secondly, in projecting the dimension and quantum of loss, as a result of the acquisition of land on which these rights are enjoyed. It is problematic for the simple and largely illiterate landholders to convert, in simple economic terms, such interests as the loss of life-supporting benefits derived from common property resources or the reciprocal benefits in the attached labour system for putting up a claim. Since the concept of 'compensation' itself is envisaged essentially in terms of cash disbursement, the approach of the Act becomes even more problematic since it requires the loss of these rights/interests to be converted in terms of monetary value which could be conveniently used for filing compensation claim. The Act either displays lack of comprehension about the complexity and variety of rights and interests or, at least, fails to recognise them so as to escape the responsibility for providing an appropriate mechanism by which communities/individuals can obtain a corresponding degree of recompense. The ease of managing compensation claims, the desire to reduce cost of acquisition, the propensity to see rights and interests in narrow legal terms and the practice of payment in terms of money for loss of rights and interests in land may have influenced this formulation.
- e) The Act has maintained studied silence on mass displacement as a consequence of acquisition of land and consequent need to provide for

resettlement and rehabilitation. This externalisation of responsibility is its fifth feature. The moral responsibility of the government in its view is exhausted by payment of cash compensation. Owing to a narrowly constructed legal view of entitlement, even the compensation mechanism bypasses a large number of displaced households and the 'community' they constitute. In the scheme of the law, there is no alternative to acquisition and, therefore, consequential displacement. Still there is no provision for resettlement and rehabilitation of those displaced. The law expects the victims of forced displacement to fend for themselves. How these persons would rebuild their lives without a wide range of facilities and amenities they enjoyed before acquisition of their land even if cash compensation can help them generate income does not bother the law. For numerous others, who do not even receive the meagre cash, facing destitution is the only consequence which the law leads to. Whatever is done by way of relocation of the displaced persons is grounded in executive action without any assistance from the law or the courts whose judicial conscience freezes while deliberating on the subject. The courts even decline to enforce executive commitments, unsatisfactory as they are, since a 'policy' does not have the force of law but only a persuasive value (Ramanathan, 1996). As no binding obligations are created, the executive is freed from any accountability for displacement.

- f) The design of law characteristically fails to take note of the social reality operating around land which determines and transforms rights and interests and to provide a mechanism for dealing with it. This emerges as its sixth feature. One dimension of this social reality relates to the status of land records which form the basis for determining rights and interests in land. Land records are prepared by the government through a complex process of identification of rights, adjudication of contesting claims, recording changes in the character of land and rights such as those effected by transfers, land use, reorganisation of land parcels, fragmentation of property, improvements carried out and the cropping pattern. These land records, by and large, remain out of date owing to the reluctance of the government to invest sufficient resources in their maintenance. The determination of compensable claims on the basis of faulty land records does great injustice to those whose rights and interests have not been incorporated in land records though they are otherwise qualified to be 'persons interested'. These persons fail to get their entitlements. There is no requirement in the law that these records be updated before the initiation of acquisition proceedings to undo this injustice.

The other dimension of the social reality is the manipulative and induced transfers of land as soon as it becomes public knowledge that land in a specified area may be acquired for a project. Those with resources and power exert pressure on the poorer landholders to transfer their land to them cheaply by spreading disinformation and creating a fear psychosis about the expropriation of their land. With no measures initiated by the district administration to check this falsehood by disseminating correct information, many people among the poor became easy prey to this ploy. The transferees, at times, also manage to get such transfers mutated in their name and duly entered in the land records before the acquisition process gets started. Their sole motive is to claim enhanced compensation, if necessary, by agitating the matter in the reference court or even higher. They are also keen to claim benefits from the project by way of employment, training, business contracts and such other benefits. Unlike poor transferors of land, the transferees in such cases have the requisite bargaining and litigating power for this purpose. The law is ill-equipped to prevent this from happening as there is no provision for freezing such transfers.

Yet another dimension of the social reality lies in the agrarian relations and the structure of power built around them. Certain rights admissible in tenancy laws do not get recognition in the land-related official documents simply because the owners of land on which such rights subsist are opposed to it. Typically, therefore, tenancies of various types on private land do not get recorded and therefore entitlements admissible to the tenants/sharecroppers under tenancy laws do not accrue because landowners resist enforcement of legal provisions concerning them. In the circumstances, informal arrangements operate in connivance with the revenue bureaucracy due to the enormous clout of landowners. These persons whose number is quite large fail to get any compensation. Similarly, occupancies on government land/public land by landless poor are simply not taken cognisance of, much less recognised for any compensatory claims because these occupancies have not been backed by a *patta* issued by the government. Even where government policy does permit distribution of cultivable land to deserving poorer persons, claims made by the eligible poor for regularisation of their occupancies remain unattended owing to corruption, bias, and inefficiency of the dealing bureaucracy. These persons are ignored in the scheme of compensation entitlement.

- g) The seventh lacunae of the design of law relates to the absence of any provision for pre-acquisition scrutiny. The legal process begins only with the issue of notification regarding the intention of the appropriate

government to acquire land. In the scheme of law, no preparatory requirement is necessary in order to carry out its provision effectively. Leaving aside the routine checking of acquisition proposals, pertinent scrutiny usually begins only after the issue of preliminary notification when 'persons interested' communicate their views to the land acquisition authority and a decision has to be taken on the need to acquire land. The absence of a provision for pre-acquisition scrutiny leads to enormous distortions and considerable social injustice. No obligation is cast on the appropriate government to scrutinise whether the acquisition of land sought is inevitable or can be avoided or reduced by exploring non-displacing and least displacing alternatives. There is also no requirement that the environmental impact assessment should be carried out even though most proposals of acquisition may involve changes in land use with adverse consequences for ecological health and biological diversity and consequent impact on the people in diverse ways. The law is insensitive to the need for looking into the social impact of acquisition or examining the rationale for the quantum of land sought. The law assumes that either the appropriate government will undertake this scrutiny before the issue of notification conveying the intent for acquisition of land or that such scrutiny will be accomplished after it if these issues are raised by 'persons interested'. The government usually does not carry out this scrutiny on its own before the initiation of acquisition proceedings because there is no legal requirement to do so. It is also too committed to the project to entertain any delay which such scrutiny may cause. Little meaningful scrutiny takes place after the issue of notification. The 'persons interested' are ill-equipped in terms of knowledge, information, resources and capacity to raise all pertinent issues affecting them and their environment. The time available to raise such issues is also extremely limited. Even when some of these issues are raised by 'persons interested', the scrutiny, if at all carried out, is most superficial, as would be evident from the perusal of many land acquisition proceedings. The mere statement that the objections/issues raised by the affected persons have been considered before taking the final decision to acquire land is deemed adequate for satisfying the requirement of law. The courts have shown no interest in going into the contents and processes of such scrutiny and for a judicial review of its propriety. The power of the government, thus, gets reinforced in the absence of a provision in law for mandatory requirement of such a scrutiny, its broad contours and the competence of agencies to carry it out.

- h) For all its overarching adherence to the rule of law, the LA Act fails to provide safeguards to check the arbitrary use of power by the government. This emerges as the eighth characteristic of the law's design. This autocratic

exercise of power is typically reflected in the quantum of land acquisition acquired disproportionate to the reasonable needs of the project, use of the acquired land for a purpose different from the one stated, failure to utilise the acquired land within a period considered rationally appropriate, use of force to take possession of land and refusal to take responsibility for the loss caused to land located in the vicinity of the acquired land by the activities of the project. The following details would elaborate these dimensions.

Quantum of Land

No parameters have been laid down in the law nor a scrutiny by experts envisaged on the quantum of land required for a given project. Consequently, the assessment made by the requiring agency is accepted as valid for the proposed acquisition. This has resulted in such distortions as widely varying quantum of land acquired for a similar project in two different locations and land acquired much in excess of the need in the foreseeable future (Asif, 1999). The Apex court has also imposed no such obligation on the government to provide a rationale for it. The acquisition authority has no means or expertise to verify the rationality of demand and whether the land asked for is on par with similar projects elsewhere. The profligacy shown in assessing the requirement of land for projects is also on account of the low rates of compensation paid to the land losers and to take advantage of the appreciation of its value in future (Morris and Pandey, 2007). This has led to the acquisition of excessive land which cannot be used for the project and is, therefore, diverted for purposes other than the one declared in the proposal. The pattern of utilisation of the acquired land by projects is also bereft of any moral compunction as is evident in the lavish housing provided to officials and township facilities created. There is no provision in the law for return of land, in excess of the need, to the erstwhile owners or to the government. The law also does not impose a penalty on the project agencies for having inflated their requirement or for using the acquired land for purposes other than the one declared.

Utilisation of land

The project agencies express a great deal of urgency in pushing their proposal for acquisition of land. The same degree of urgency is not shown in using the acquired land. In many cases, the acquired land remains unutilised for years. As a result, in many instances, the unutilised land remains unprotected and is encroached upon by squatters, land grabbers, etc. This happens due to the

unrealistic estimation of land requirement leading to a waste of resources as well as unnecessary suffering to the affected persons. There is no provision in the law for setting a time limit for utilisation of land and, failing which, for return of land to the government and thereafter to the land losers.

Taking Possession of land

There is no requirement in the law that the physical possession of land should be taken only after compensation has been paid and resettlement arrangements have been completed. Usually, the acquisition authority takes formal possession of land after the conclusion of the acquisition process and hands it over to the project authority without always making payment of the entire compensation amount and completing the resettlement requirements. The latter part of the work proceeds slowly since the acquisition authority is primarily interested in the acquisition of land. Compensation payment is sometimes delayed because of inadequate funds provided to the acquisition agency. The resettlement of the displaced persons and their rehabilitation, if any, is considered peripheral work and does not command matching attention. Quite often, force is used to take possession of land under pressure from the project authority even though compensation has not been paid and the resettlement site is not developed for people to shift. This is unethical as the people in such cases are left with no resources to look for an alternative livelihood and no proper house to live in with essential amenities provided.

Collateral damage

In several cases, project activities carried out on the acquired land damage the productive potential of the land in the vicinity which has not been acquired. There is no provision in the law either to compulsorily acquire such land or to compensate the landholder for the irreparable damage caused to the life-supporting asset. This damage particularly occurs in the case of industrial, mining, and power projects. The law is silent on the subject as the damage is caused long after the land has been acquired. The project authorities do not assume any responsibility for this loss. The government too fails to intervene in such cases.

The discourse on land acquisition has thrown up many suggestions to change the existing design of the Act to address these concerns. The important among them are :

- All rights and interests in land, individual and communal should be recognised in the Act and their loss appropriately compensated.

- The absolute nature of power currently enjoyed by the government should be checked by 1) defining 'public purpose' and subjecting its use to judicial scrutiny. 2) any change of 'public purpose' other than the one originally stated after the issue of preliminary notification should go through the process of acquisition as is undertaken for a new proposal.
- Non-utilisation of land within a period of five years should require the acquired land to be returned to the government and thereafter to the erstwhile landowners.
- Adequate time should be given to the people likely to be affected by the proposed acquisition of land to articulate and express their views on the proposal. They should be furnished all necessary information which enables them to do so.
- Land acquisition in tribal areas should be undertaken only when absolutely unavoidable and with the consent of the *gram sabha* and subject to the terms settled with it. It should be consistent with the protective laws and arrangements and Supreme Court judgments.
- The identity of 'community' should be recognised in the definition of 'person interested' as an entity different from the individuals who constitute it with interests of its own. It should be entitled to participation in the proceedings for raising objections and putting up claims for compensation.
- Mechanisms should be worked out to compensate for the loss of various rights and interests in land whether recognised or not taking into account their complexity. This should be done in consultation with the affected persons and their community.
- No displacement should be physically effected unless full compensation is paid and at least 2/3rd work of the resettlement and rehabilitation package is completed. Acquisition proceedings should be initiated keeping this in view.
- Project authority should either acquire private land lying in the vicinity of the acquired land and damaged by its activities or compensate for the damage caused or restore its potential.
- No proceedings for land acquisition should be initiated unless an initial screening is carried out which should cover the scrutiny of 'public purpose', non-displacing /least-displacing alternatives, updating of land records, rationale for the site and the quantum of land, social and environmental impact assessment, correct estimation of the displaced persons, preparation of the resettlement and rehabilitation plan and adequate financial provisioning.

- A comprehensive law on the acquisition of land should be enacted which takes into account the needs of different sectors so as to avoid the need for multiple laws. Where a separate law is considered necessary due to the unique needs of a sector, it should have the same essential features as those of the nodal LA Act.
- The law on acquisition should comprehensively incorporate the obligation of the requiring agency to resettle and rehabilitate the displaced persons and lay down broad contours of the resettlement and rehabilitation plan.

Practice of acquisition

The acquisition process as it unfolds in practice makes the trauma of the affected persons worse than what it actually is. This is on account of the bias of officials in favour of the project agency requiring land. The acquisition authority does not function even as a neutral agency so as to harmonise people's interests with the project needs. Let alone project a positive orientation for the displaced persons. It readily identifies itself with project authority but is indifferent, if not hostile, to the concerns of the displaced persons. There is no effort to reach out to them and address their grievances with a view to minimising the trauma. This is borne out by various acts of omissions and commissions. The more important among them are indicated below.

Omissions

Preparatory

- There is lack of effort by the Collector as the head of revenue administration to prevent manipulated/induced transfers before the initiation of land acquisition proceedings. Even without a legal provision, if revenue officers in the area are suitably alerted about the likelihood of such transfers by the Collector soon after getting information about a project being taken up in an area, manipulated transfers can be prevented and, in any case, the mutation of such transfers and their entry into land records can be stopped. Besides, revenue machinery can also caution people in the affected villages about the likelihood of such transfers by spreading disinformation. Local *gram panchayats* can also be involved in this preventive measure. This does not happen.
- The Collector fails to take the initiative in updating land records pertaining to, at least, the less controversial /complex issues such as mutations, entry of names of *patta* holders who have been distributed land by the government, settlement of cases where those of an eligible category have converted

wasteland into cultivable land, entry of rights and interests customarily enjoyed by the local community on common property resources, sanction of homestead rights on private land, transfer of government land, change in land use, etc. This work can be accomplished expeditiously by holding camp courts and mobilising additional officials from other areas.

- Government fails to direct the collector/land acquisition authority to scrutinise the rationale of acquisition proposals in respect of the quantum of land proposed for acquisition, suitability of project location, non-displacing/least displacing alternatives before the initiation of acquisition proceedings. The existence of a legal provision is not necessary for this scrutiny if there is the will to do so.
- The acquisition authority does not make available all relevant information concerning the project in time to the those likely to be affected and the local panchayats in a language they understand and through a mode that ensures its reach. The affected persons fail to get even a copy of the Gazette notifications issued under the Act. There is no institutional arrangement to answer their queries and clear their doubts and apprehensions. These arrangements can be enforced even with the existing legal provisions.
- While dealing with objections raised by the 'person interested', the genuineness of 'public purpose' and necessity of acquisition is not seriously evaluated. No public hearing is held to seek their views and understand their concerns. The objections raised by the affected persons and organisations representing them against the acquisition are routinely disregarded. Sensitive officials can carry out such a scrutiny for which there is no bar in the law.
- Neither the government nor the acquisition authority show any interest in directing the project agency to get environmental and social impact assessment carried out so as to realistically assess the cost and benefit aspects of the proposal and to have firm estimates regarding the persons likely to be displaced. This can be accomplished even if there is no legal requirement to do so.

Commission

- No serious efforts are made to obtain informed consent of the *gram sabha* in the areas covered under PESA, 1996. Rather, the consent is manipulated or obtained by coercion, fraud or threat. People's unwillingness to give consent to the acquisition proposal is punished by harassment and repression.

- There are delays in processing proposals of acquisition, finalising assessment of compensation and taking possession of land. (Das, 2006) This prolongs the uncertainty of the displaced persons who cannot make effective use of land for their subsistence. These delays can be avoided by proper and advance planning.
- The callousness in effecting multiple displacements of the same persons in a single generation is caused by the failure to anticipate further development of the area and undertake permanent resettlement of the displaced persons at a safe site after the first displacement. The alternatives to avoid it are also not seriously explored (Kothari, 1996).
- The project authorities deliberately underestimate the 'cost' of acquisition by ignoring social cost (affecting people and environment) and overestimate the benefits in order to present a favourable picture of the cost-benefit matrix (Kothari, 1996). Neither the appropriate government nor the land acquisition authority evaluate this matrix but go along with the project calculations.
- The number of people likely to be displaced are underestimated by the project authority so as to deflate the cost. This affects resettlement operations adversely.
- Land acquisition in the tribal areas have thrown up cases of collusion of officials at all levels in deliberately using the Land Acquisition Act to bypass restrictions on alienation of tribal land for an undefined public purpose and later to abandon the purpose and transfer land for private purposes (Asif, 1999). This has particularly happened in the case of housing societies for officials.
- Officials are, as a rule, hostile to any expression of resistance and protest against proposals of acquisition. They try to subvert this opposition in various ways. In the context of land acquisition proposals, they connive at the manipulative tactics used by the requiring agencies to coerce resisting villagers into agreeing to the land acquisition proposal. For example, mine owners obtain mining lease on the government land adjacent to the private land of people who are unwilling to allow acquisition of their land and then frighten them by continuous blasting operations. Project agencies dealing with the construction of dams use the threat of submergence to hasten their eviction. There have been cases when officials of industrial projects have polluted drinking water sources on which people of the village depended to break their resistance to acquisition (Asif, 1999). At times, they use divisive tactics by favouring a few displaced persons with extra benefits to weaken

the united opposition to the project (Kothari, 1996). The project officials are known to employ intermediaries and musclemen to threaten, assault leaders/local participants and involve them in criminal cases to intimidate opponents of project. The victims get no help from the government agencies in these situations.

- State machinery resorts to eviction of people from their land and houses without payment of full compensation by the acquisition authority. The officials also fail to ensure that payment of compensation is sent to the affected persons after eviction. The delay in payment forces the displaced persons to leave the area in search of work. There is no effort to trace the whereabouts of such persons. There are cases, where people displaced in the 1950s and 60s have not received their compensation till date. As per official rules, undisbursed amounts are deposited in the treasury the withdrawal of which involves a lot of harassment and is riddled with corrupt practices.
- The acquisition authority is also disinterested in reaching enhanced compensation to all eligible persons where a reference court has revised the amount declared in the award. The land acquisition officials make no effort to convey the necessary information in time to the affected persons and to assist them in filing their claim.
- The officials use force to evict the affected persons from the acquired land and shift them to the relocation site without ensuring that the site is fully developed for the displaced persons to settle. There is widespread lack of seriousness in planning resettlement development and its timely execution leading to a 'painful and traumatic period of transition' (Kothari, 1996).
- The project officials show no interest in creating a mechanism for participation and grievance redressal with a view to sorting out problems relating to the acquisition and resettlement. No legal provision is required to establish such institutional arrangements.

To check insensitive acquisition practices, critics have advocated dedicated institutional arrangements at the central, state, district and project level to address the needs of acquisition and resettlement and rehabilitation work. Transparency in decision-making and execution, easy access to information, effective coordination among different agencies involved, user-friendly grievance redressal are among the major suggestions included in the discourse. It has also been recommended that the project should have participatory structures for decision-making and provide a mechanism for enforcing accountability of the project officials in the processes of acquisition and

resettlement and rehabilitation work. The officials involved in carrying out land acquisition, resettlement and rehabilitation should be adequately trained and sensitised particularly to the problems of vulnerable communities and gender concerns. Comprehensive and effective advance planning for resettlement and rehabilitation work and execution of a substantial part of it should precede physical shifting of people from their land and houses. No force should be used for this purpose.

Government Response

Faced with strong resistance from peasants and mounting pressure from social activists, non-government organisations and civil society groups against its land acquisition policy and archaic nature of the land acquisition laws, the central government has responded by proposing amendments to the Land Acquisition Act, 1894. The proposed amendments are contained in the Land Acquisition (Amendment) Bill-2007 which was introduced in the Lok Sabha (Lok Sabha, 2007). The last major amendment to the Act was carried out in 1984. The subsequent attempt was made to amend the Act through the proposed Land Acquisition (Amendment) Bill, 2000. It failed to materialise because the proposals were strongly criticized by the civil society groups for ignoring major issues. They were also rejected by the top bureaucracy on the ground that the changes would stall all acquisition of land leading to time and cost over-run of projects (MORD, 2004). The current proposal has gone much farther than the aborted bill of 2000. It takes into account several suggestions to which a reference has been made in the preceding pages. The following are the main features of this Bill:

Exclusion of acquisition for Companies

The Bill has removed the words “and for companies” from the title and the Preamble of the Act. In pursuance of it, Part VIII of the Land Acquisition Act, 1894 relating to “Acquisition of Land for Companies” covering Sections 38 to 44B have also been omitted. This implies that the government would not acquire land for companies under this Act and shall confine compulsory acquisition to the land required for public purpose only.

Commitment to rehabilitation of displacees

The government has also notified the National Rehabilitation and Resettlement Policy, 2007 and has also decided to give a statutory backing to it. The Rehabilitation and Resettlement Bill, 2007 has also accordingly been introduced in the Lok Sabha. The provision for rehabilitation and resettlement contained

in the two instruments are applicable to those affected by the acquisition of land under any law in force or involuntary displacement due to any other reason. This commitment to rehabilitate and resettle the persons affected by involuntary displacement is also incorporated in the Land Acquisition (Amendment) Bill 2007. This makes rehabilitation and resettlement of the displaced persons integral to the process of acquisition of land and also enforceable.

Social Impact Assessment

There is also an obligation to carry out social impact assessment in respect of land acquisition carried out under the Act where physical displacement of 400 families en masse in plain and 200 families in hilly/desert/scheduled areas is involved for the purpose of preparing the rehabilitation and resettlement scheme and tribal development plan within it.

Redefinition of Expressions

The expression “person interested” has been expanded to include tribals and other traditional forest dwellers who have lost any traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Those having tenancy rights under the relevant state laws have also been included in this definition. These two categories of persons have been enabled by this provision to claim compensation for the loss of rights in land.

Interstate projects

The central government has been designated as the “appropriate government” for acquisition of land in respect of inter-state projects.

‘Public purpose’ redefined

The expression “public purpose” is being revised to include provision of land for strategic purposes relating to defence forces or any other work vital to the state, infrastructure projects which benefit the general public and any other purpose useful to the general public for which 70 per cent of the land has been procured privately but the remaining 30 per cent is required.

The expression “infrastructure projects” has been elaborated to include activities relating to electricity generation, transmission and supply, construction of roads, bridges, airports, ports, rail, mining, water supply, sanitation, irrigation besides any other public facility which may be notified by the central government.

Protective measures for landholders

To prevent motivated transfers of land involved in acquisition, transactions in respect of land proposed to be acquired or creation of any encumbrance on such land have been disallowed from the date of the publication of notification under Section 4(1) of the Act until the final declaration under Section 6 or award made or paid under Section 16, whichever is earlier.

The Collector is required to undertake and complete the updation of land records including the classification of land and its tenure, survey and standardisation of land and its property values in respect of the land under acquisition within the period available between issue of preliminary notification under Section 4 and before declaration under Section 6 of the Act.

Transparency in proceedings

To achieve greater transparency in the land acquisition proceedings, the Collector is required to keep open to the public and display a summary of the entire proceedings relating to the acquisition of land including compensation award to each individual.

Compensation

Three norms for assessing and determining the market value of land have been specified. Of the three, whichever brings out a higher value of land is to be relied upon. These norms are: the minimum land value, if any specified in the Indian Stamp Act 1899 for registration of sale deeds in the area, the average of sale price for a similar type of land situated in the vicinity ascertained from not less than 50 per cent of such sale deeds during the preceeding three years, the average of sale price paid or agreed to be paid for not less than 50 per cent of land already purchased for the project where a higher price has been paid in respect of provision of land for development under any scheme of the government which has been subsequently disposed of. Where these conditions are not applicable, the state government has been empowered to specify the floor price per unit of the said land based on the average of higher prices for similar land situated in the adjoining area to be ascertained from not less than 50 per cent of sale deeds registered during the preceding three years where a higher price is paid. In addition, the market value of land shall be assessed after ascertaining the intended land use category of such land for which purpose the value of land of the intended category in the adjoining areas or vicinity shall be taken into account. The latter provision brings within the ambit of market value appreciation in the value of land resulting from its proposed use. For determining

the market value of immovable property, trees and plants and standing crops, consultation with experts in respective disciplines has to be made.

Compensation for damages

The compensation would also be payable for damages caused to land, which is excluded from acquisition proceedings, during survey and measurement of land following preliminary notification within a period of six months from the completion of such work.

These norms for determination of compensation may also be applied to cases pending for award before the coming into force of the amended Act.

Enhanced compensation for urgent acquisition

In cases of acquisition of land under urgency, an additional compensation of 75 per cent of the market value would be payable in addition to the existing entitlement.

Enhancement of solatium

The package of cash compensation is being enhanced by increasing the solatium amount to 60 per cent of the market value as against the existing 30 per cent.

Payment in shares

The mode of payment of compensation is being diversified with an option that part payment in the form of shares, debentures up to 20 per cent of the amount, stretchable to 50 per cent, where the land requiring agency is authorised to issue them may be made.

Time bound compensation payment

The entire compensation amount would now have to be paid within a period of 60 days from the date of the award. The physical possession of land will also be taken within this period.

Speedy Acquisition of Land

For ensuring timely acquisition of land, it has been proposed that the proceedings shall lapse and no fresh notification can be made for a period of one year if the declaration to acquire land within the specified period following issue of preliminary notification is not made. In the case of a lapse for the second time, fresh proceedings cannot be started for five years.

Time Limit for Award reduced

The period of making awards relating to compensation is being reduced to one year for quicker completion of acquisition proceedings. The failure to adhere to this time schedule would lead to the lapse of acquisition proceedings.

Financial obligation of the project

The agency requiring land is now being made liable to pay the cost of acquisition which includes expenditure incurred on infrastructure and amenities on the resettlement site, administrative cost of acquisition of land and planning and implementation of the rehabilitation and resettlement scheme besides compensation payable to the land losers and demurrage for damages in the process of acquisition, etc. This may help in expediting payment of compensation and execution of rehabilitation and resettlement operations.

Reference for Compensation Settlement

The provision of a reference court in the existing Act is being replaced by the Land Acquisition Compensation Disputes Settlement Authority to be set up each at the centre and state level for disposal of such cases within a period of six months. Detailed requirements have been laid down regarding its composition, and tenure, powers and functions of its members.

Expeditious reference process

The Collector would have to make a reference to the Authority for adjudication of compensation disputes within 15 days from the receipt of such an application. The failure to do so would entitle the applicant to directly approach the Authority requesting that such a reference be made within a period of 30 days. The period for entertaining a reference petition has been extended to a further period of one year if the Collector is satisfied about the reasons for not filing the application within the specified period.

UTILISATION OF ACQUIRED LAND

Restrictions have been introduced in respect of the transfer of acquired land by the requiring agencies. No such transfer of the acquired land can be made except for a public purpose and after obtaining the prior approval of the government. If the acquired land remains unutilised for a period of five years from the date of taking over possession, it shall revert to the government. Where acquired land is transferred by the government for a consideration, 80 per cent

of the difference in the acquisition cost and the consideration received shall be distributed among those from whom land has been acquired in proportion to the value at which the land was acquired. A separate fund shall be created for this purpose to be administered by the Collector.

It is evident from the foregoing outline of the proposed amendments that most of the thorny issues raised in respect of the Land Acquisition Act, 1894 remain unaddressed notwithstanding some of the less important issues where some relief has been provided to the affected persons. With regard to the conceptual frame, there is no change discernible in the rationality of the state's absolute control over natural resources. The concept of Eminent Domain as the juridical basis for the state's power to compulsorily acquire private land has not been abandoned. In fact, it has even been overtly mentioned, not in the Bill, but in the National Rehabilitation and Resettlement Policy, 2007. There is not the slightest willingness to seek a less coercive and more consensual mechanism to acquire land for 'public purpose'. The doctrine, therefore, continues to remain immune to any challenge in the courts.

The ethical basis for use of state power for acquisition of land embedded in the rationality of 'public purpose' has, however, been reconstructed but without any attempt to define the terms itself. The inclusive nature of a restructured list for 'public purpose' has become shorter in length but, ironically, wider in the scope of its application. Besides activities relating to defence or any other work vital to the state, land acquired for infrastructure projects which benefit people in general has been included. 'Any other purpose useful to the 'general public' has also been added where 70 per cent of the requirement of land has been procured through market transactions and the remaining 30 per cent of the requirement would be acquired as 'public purpose'. This restructured explanation of 'public purpose' seeks to create an impression that the ambit of acquisition by the government has been curtailed to the extent of 70 per cent which has been externalised to direct dealing between the buyer and seller. Together with the omission of land required for companies from the purview of the Act an impression is sought to be conveyed that the government has considerably curtailed the scale of compulsory acquisition. This impression is, however, belied by the wide enough explanation provided to the 'infrastructure projects' which not only includes a large number of sectors whose schemes would qualify for this label but also an open-ended provision by which any other public facility notified as an infrastructure project by the government can also be added to the activities already included. The ambit of infrastructure projects has been so enlarged as to bring in mining activities as well which may encompass requirement of land for mineral-based industries and its

supportive infrastructure besides extractive operations. The redefinition of 'public purpose' protects the whole range of requirements for which currently land is being acquired except for those activities which cater to the welfare activities focused on the poorer sections of society such as educational, housing, health, slum clearance, etc. which form part of the existing list. The exclusion of acquisition of land for companies also turns out to be a cosmetic exercise in this light. Most of the infrastructure activities in the current dispensation of the economy are being financed and executed by companies and this trend would only increase. Their entire requirement of land for such projects would now be acquired as 'public purpose'. There is also an apprehension that the welfare activities focused on the poorer sections, proposed to be excluded from the list of 'public purpose', may be taken up as a 'purpose useful to the general public' where the government commits only to acquire 30 per cent of the land required for them leaving 70 per cent to the executing agency to procure it through the market. This implies that such activities may be largely privatised with attendant financial implications for the poor.

The externalisation of the requirement of land for companies to market transactions to the extent of 70 per cent is no blessing either. It provides little relief to those who do not want to sell their land at all. As against the coercion of the government, such persons would now be faced with devious pressures from corporate agencies for sale of their land. The poor and the vulnerable among them would find it difficult to withstand these pressures, given the resources and muscle power of their agents and the covert assistance they get from the government functionaries. These transactions would, therefore, never be on a 'willing seller – willing buyer basis'. The unequal status of buyers and sellers in the market would inevitably affect the returns from such transactions. In fact, this alternative would even be worse for these persons as the mode of procurement through the market would have little transparency and accountability. More important, the affected persons would also be deprived of the mandatory rehabilitation and resettlement which the National Rehabilitation Policy, 2007 and the corresponding Bill have promised to those whose lands are acquired by the government for 'public purpose'. Overall, the changes proposed do not help the agitating peasantry since the pressure on land is not reduced. Only the government has managed to deflect the hostility of the affected persons from itself to the land requiring agencies and also escape responsibility for their resettlement and rehabilitation.

The proposed amendments have, however, diminished the existing tilt in the law in favour of the state by a mandatory provision for rehabilitation and resettlement of persons affected by such acquisition. The assumption of this

responsibility has not only been concretised by notifying the National Rehabilitation and Resettlement Policy, 2007 (MORD, 2007) but also enabling its enforceability through the Rehabilitation and Resettlement Bill, 2007 (Lok Sabha, 2007). But even this concession has been considerably diluted and does not generate much hope in the peasantry to get a better deal. The applicability of the provision for rehabilitation and resettlement is made conditional to the involuntary displacement satisfying a numerical benchmark which is both irrational and arbitrary. This would itself keep out a large number of the affected persons from its benefit. The policy has no provision to make it applicable to the displaced persons from earlier projects. Thus, a huge number of people from these projects who have not been rehabilitated are abandoned again. Even in terms of the contents of rehabilitation and resettlement, the provisions turn out to be lacking in certainty, surety or guarantee. In respect of the two major requirements for addressing the spiral of impoverishment – provision of land for land lost and/or an assured, regular and sustainable employment, the measures included in the two documents are hedged by caveats and conditions which deprive them of any value. The provision of land has been promised if the government/wasteland is available which is most unlikely to be satisfied. The alternative of acquiring land for such provisioning has also been disregarded. Similarly, the provision in respect of employment in the project is only a preference and not an assurance and, that too, if vacancies exist and persons seeking jobs fulfil the necessary eligibility qualifications. The projects, currently, create minimal jobs largely in the skilled and highly skilled category for which the overwhelming majority of the displaced persons in rural areas would be ineligible. There is not even a commitment to make them employable through training, skill development and apprenticeship with an obligation to find durable employment for them in the project and elsewhere while meeting the cost of their subsistence till then.

The issues relating to the redefinition of "person interested" and "land" consistent with the ground social reality also remain largely unaddressed. While making some improvement in the existing formulations by including tribals and traditional forest dwellers as also those having tenancy rights in the category of "person interested", the changes proposed fail to take note of a large number of informal tenants operating on oral contracts who have no legal proof of their tenancy status. They would continue to get excluded because tenancy status has not been conferred on them under the law. Also ignored are occupants of the government/public/panchayat land whose occupancy remains unrecognised/un-regularised even though many of them are entitled to such validation in terms of the extant state government policies. Besides, agricultural

labourers and others who are dependent on the acquired land for their livelihood and other life-supporting benefits have also been left out. Similarly, the expression "land" has not been amplified to include the government/ panchayat/ public land with a view to covering loss of access to such land in the ambit of compensation. The valuation of land and property for assessment of compensation continues to lie exclusively with the government rather than entrusted to an autonomous expert agency and fails to invoke confidence in the land losers about its fairness.

The amendments make no radical change in the scheme of compensation. They fail to provide compensation for the loss of livelihood so as to provide some relief to a large number of people who are dependent on the acquired land though they may neither own land nor possess secure rights and interests in it. While such categories of persons may be entitled to resettlement and rehabilitation in terms of the provisions of the new policy, they receive no financial compensation for the loss of their existing vocation. The ownership of land continues to remain central to the conception of entitlement to compensation. This ignores the ground reality that the persons who lose livelihood are far more vulnerable than those who lose land because they have nothing to fall back on to restart their lives. They may even fail to get wage work near the site of resettlement and would, therefore, be forced to migrate and join the destitute urban labour market.

In respect of compensation for the loss of land, the changes suggested do not move away from 'market value' fundamentalism. The alternative of substituting it by 'replacement value' of land has been ignored. The prescription of norms for determining the 'market value' merely codify and objectivise what existed earlier in the realm of practice and subjective action. The methodology of assessment virtually remains the same. The cash compensation even on the basis of proposed amendments would fail to procure alternative productive assets for the land loser. Such persons would thus be reduced to the status of landless labourers and continue to suffer multiple deprivations.

The mode of payment continues to be in the form of cash disbursement. The alternative of providing land in place of cash, even by private procurement with intermediation of the government has been completely disregarded. No safeguards have been introduced to protect poor people from the hazards of cash payment. The suggested part payment in the form of shares, debentures could not be more out of tune with the needs of the poorer peasants who have neither the capacity nor the interest in opting for this alternative.

In its overall design, the relationship between the state and people and people and land, as reflected in the existing Act, remains unaltered. Equally, there is no endeavour to dovetail the restrictions in respect of alienation of land of tribals in scheduled areas and the power conferred on the *gram sabha* in respect of it in the panchayats (Extension to Scheduled Areas) Act, 1996 appropriately in the Bill. The proposed changes continue to be totally 'individual-centric' in recognition of rights and conferment of entitlements while ignoring altogether the existence of the 'community' and its role in regulation and management of land in tribal areas and common property resources elsewhere. The variety of rights and interests in land with their multiple dimensionalities fails to get reflected in the structure of compensatory mechanisms.

The social reality in respect of agrarian relations has, however, been taken note of. It would be possible to disregard any transactions in land involved in acquisition once the process has started. The provision, however, would fail to stop manipulative transfers of such land since these attempts are made much before the issue of preliminary notification for acquisition of land. No pre-acquisition action to stop such transactions has been made. The Collector would also have to update land records before the declaration of the government to acquire land. This is certainly an improvement on the existing position but the assumption that it can be accomplished in the period between the issue of preliminary notification under Section 4 (1) and final declaration under Section 6 of the existing Act does not take note of the enormous time taken for completing this process. The crucial issue relating to recording of tenancies, so widely and strongly resisted by landowners, would continue to rob the exercise of updating land records much of its value for a large number of informal tenants cultivating land on oral contracts.

The proposed changes fail to appreciate the need for scrutiny of proposals before the initiation of acquisition proceedings so as to check the excessive acquisition of land. Disempowering the project agency to transfer acquired land even for a public purpose without prior approval of the government and placing a time limit on utilisation of the acquired land may restrain requiring agencies from inflating their demand for land. But failure to return the unutilised land to the land losers takes away from this regulation its beneficial social effect. The provision only benefits the government by enabling it to use the unutilised land elsewhere but does not do any justice to the land losers since they neither get back their land nor any additional compensation. The willingness to return 80 per cent of the gains made from the transfer of the acquired land to a person on consideration highlights the continuing inequity in the process of assessment of the market value of land which has not been

addressed. There is no willingness to subject the acquisition proposals from requiring agencies to expert scrutiny in respect of the quantum sought and its location.

With regard to the practice of acquisition, the need for social impact assessment has been conceded. This would do away with the existing practice of underestimation of the displacement involved. However, restricting this exercise to only projects satisfying the prescribed numerical benchmark of involuntary displacement and exempting emergency acquisition for defence purposes from its purview would keep out a large number of projects from this obligation. The uncertainty faced by the affected persons resulting from the delay in completion of acquisition proceedings has been addressed by fixing a time limit for it by reducing the period within which the award has to be made and mandating possession of land to be taken within a specified time frame. The harassment caused to the affected persons by delay in payment of compensation has also been checked by making a provision that the entire compensation will have to be paid before land is taken possession of. Eviction from land has also been disallowed without making this payment and ensuring sufficient progress in their rehabilitation and resettlement. It would be possible now to adhere to this condition because the obligation of the requiring agency to meet the entire cost of acquisition, which includes all the expenses relating to compensation, rehabilitation and resettlement, has been brought within the ambit of the proposed changes.

The negligence or bias of the Collector in the failure to make a reference to the court within the specified time has been checked by enabling the aggrieved land loser to approach the authority adjudicating compensation disputes directly in the matter and seeking its direction to the Collector to make the reference within a specified time. The period for entertaining an application of reference has also been extended if compelling circumstances for not doing so are adequately explained. However, the provisions relating to reference have retained the condition about non-acceptance of the award for seeking this benefit and, therefore, fail to benefit those who are pressured to accept the award even if they are dissatisfied. No obligation is cast on the Collector to ensure that those who are entitled to redetermination of compensation as a result of the decision of the reference court are enabled to do so by providing them the requisite information in time. The provisions to replace the Reference Court by an authority for disposal of disputes relating to compensation separately at the central and at the state level may expedite the disposal of such claims in view of the time limit fixed for this purpose but create an anxiety regarding the likely dilution of independence in decision-making resulting from the structure of the authority and its composition.

The proposal to enhance the amount of compensation in cases of urgent acquisition is a poor substitute for the tremendous hardships caused to the affected persons and the denial of right of participation in the proceedings. There is an apprehension that given the wide scope of acquisition of land under urgency in the existing law and the definition of 'infrastructure projects' in the proposed amendments, the government may be tempted to use this route of acquisition in a large number of cases, particularly where resistance from landholders is anticipated.

Overall, the thrust of changes contained in the Bill suggest that the government is more interested in a quicker acquisition process and partial externalisation of its mode for the benefit of project agencies than in meeting the basic concerns of the agitating people for respite from the prospects of involuntary displacement. There is no visible shift or dilution in the policy on acquisition of land for development projects or even to indicate its diminished scope. As a result, there is going to be no let up in agriculturists increasingly losing their land and livelihood whether resulting from compulsory acquisition by the government or negotiated procurement by private agencies. The widespread resistance to this deprivation has induced no rethinking on economic policies which involve transfer of land from farmers to the government and corporate agencies. Even on the issue of compensation and rehabilitation, there is little to generate faith and hope in the affected persons of a dignified future. The foregoing analysis signifies the narrow limits within which the government is willing to make alterations in the acquisition law and the rehabilitation policy to render justice to them. The poor farmers are least likely to be enthused to part with their land willingly in these circumstances. The resistance to acquisition/procurement may, therefore, intensify. A disgruntled peasantry with its back to the wall is just the fodder for de-stability and an invitation to the radical groups to widen their appeal to challenge governance and democracy. A nation facing a 'million mutinies' can ill afford this prospect. Development-induced displacement is too explosive an issue to be taken lightly. For a circumspect ruling class, there is no escape from a serious review of the model of development which is at the root of it and neo-liberal economic policies which have accentuated its multi-dimensional inequities. □

References

Aareparampil, Mathew (1989). 'Industries, Mines and Displacement of Indigenous People: The Case of Chhotanagpur', in Fernandes and Thukral (eds).

Asif, Mohammed (1999). 'Land Acquisition Act, Need for an Alternative Paradigm', *Economic and Political Weekly*, June 19.

Baxi, Upendra (1989). 'Notes on Constitutional and Legal Aspects of Rehabilitation and Displacement', in Fernandes and Thukral (eds).

Centre for Science and Environment (1996). *Second Citizens Report on State of India's Environment*, CSE, New Delhi.

Cernia, Michael (1998). 'Impoverishment or Social Justice? A Model for Planning Resettlement', in Mathur, H.M. and Marsden, David (eds), Oxford, New Delhi.

Cernia, Michael (1999). Introduction, in Parasuraman, S. (1999), ISS, New Delhi.

Compaaign for People's Control over Natural Resources (2001). *The Land Acquisition, Rehabilitation and Resettlement Bill, 2000*, Samaj Parivartana, Samudaya, Dharwad.

Commission, Planning (2003). *The Tenth Five Year Plan*.

Das, Sukumar (2006). 'The Land Acquisition Laws in India: An Overview with Some Suggestions for Amendment'. In Mathur, H.M. (ed), Oxford, New Delhi.

Fernandes, Walter and Thukral, Enakshi Ganguly (eds) (1989). *Development, Displacement and Rehabilitation*, Indian Social Institute, New Delhi.

Fernandes, Walter and Paranjape, Vijay (eds) (1997). *Rehabilitation Policy and Law in India*, Indian Social Institute, New Delhi.

Goyal, Sangeeta (1996). 'Economic Perspectives on Resettlement and Rehabilitation', *Economic and Political Weekly*, June 15.

Kashyap, Mankodi (1989). 'Displacement and Relocation: Problems and Prospects', in Fernandes and Thukral (eds).

Kothari, Smithu (1996). 'Whose Nation: The Displaced as Victims of Development', *Economic and Political Weekly*, June 15.

Lok Sabha (2007). *The Land Acquisition (Amendment) Bill, 2007, Bill No. 97 of 2007*.

Lok Sabha (2007). *The Rehabilitation and Resettlement Bill, 2007, Bill No. 98 of 2007*.

Lok Sangram Manch and All India Kishan Mazdoor Sabha (2005). 'Intensify Tribal Struggle', Important Documents Placed Before the All India Tribal Convention held at Bhubaneshwar, October 24-25.

Mahapatra, L.K. (1999). *Resettlement, Impoverishment and Reconstruction in India*, Vikas, New Delhi.

Mathur, Hari Mohan (1997). Managing Projects that Involve Resettlement: Case Studies from Rajasthan, India.

Mathur, Hari Mohan (2006)a: 'Resettling People Displaced by Development Project: Some Critical Management Issues', *Social Change*, 36(1), March.

Mathur, Hari Mohan (ed 2006)b: *Managing Resettlement in India*, Oxford, New Delhi.

Ministry of Rural Development, Government of India (2004). Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration.

Ministry of Rural Development, Govemment of India (2007). The National Rehabilitation and Resettlement Policy, 2007.

Morris, Sebastian and Pandey, Ajay (2007). 'Towards Reform of Land Acquisition Framework in India', *Economic and Political Weekly*, June.

Pandey, Balaji (1998). *Depriving the Underprivileged for Development*, ISED, Bhubaneshwar.

Parasuraman. S. (1999). *Development Dilemma*, ISS, New Delhi.

Ramanathan, Usha (1995). 'Displacement and Rehabilitation: Towards a National Policy', *Lokayan Bulletin* 11 (5) March – April.

Ramanathan, Usha (1996). 'Displacement and the Law', *Economic and Political Weekly*, 31 (November 24-June 15).

Roy Burman, B.K. (1992). 'Indigenous People and Their Quest for Justice', in Chaudhuri, Buddhadeb (ed), Inter-India, New Delhi.

Sharma, B.D. (1993). "Community Control Over Natural Resources and Industry: The Significance of the Mavalibhata Declaration" in Fernandes, Walter (ed): *The Indigenous Question: Search for an Identity*.

Singh, Chhatrapati (1989). 'Rehabilitation and Right to Property', in Fernandes and Thukral (eds) (1989) op.cit.

Thukral, Enakshi Ganguly (1996). 'Development, Displacement and Rehabilitation – Locating Gender', *Economic and Political Weekly*.

Upadhyay, Sanjay and Raman, Bhavani (1998). *Land Acquisition and Public Purpose*, The Other Media, New Delhi. ●

About the Author

K. B. SAXENA retired from the Indian Administrative Service in 2001. He is currently Professor of Social Justice and Governance in the Council for Social Development. His major areas of interest are: Land Reforms, Agrarian Relations, Rural Development, Scheduled Castes, Scheduled Tribes, Labour, Health and Governance.

