

**DISPLACEMENT AND REHABILITATION: A STUDY OF
LAWS AND PRACTICES GOVERNING THE RIGHTS OF
PEOPLE AFFECTED BY MEGA PROJECTS.**

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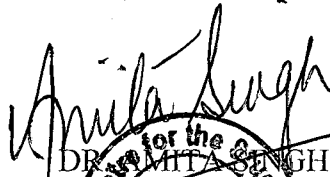
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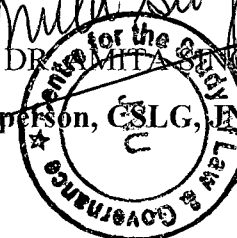
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LIST OF ABBREVIATIONS

CBA- Cost-Benefit Analysis

CII- Confederation of Indian Industry

CPI (M) - Communist Party of India (Marxist)

CPR's- Common Property Resources

DFDR- Development Caused Forced Displacement and Resettlement

DID- Development Induced Displacement

DP's- Displaced Persons

GDP- Gross Domestic Product

GR- Government Resolutions

LAA- Land Acquisition Act

MoRD- Ministry of Rural Development

NAC- National Advisory Council

NDA- National Democratic Alliance

NTPC- National Thermal Power Corporation

P.A- Per Annum

PAF's- Project Affected Families

PAP's- Project Affected Persons'

PMO- Prime Minister's Office

PWD- Public Works Department

R&R- Resettlement and Rehabilitation

RTI- Right to Information

SMEs- Small and Medium Enterprises

SEZ- Special Economic Zone

UPA- United Progressive Alliance

U/S- Under Section

USSR- Union of Soviet Socialist Republic

WB- World Bank

WBIDC- West Bengal Industrial Development Corporation

CHAPTER 1

Introduction

CHAPTER 1

Introduction

The controversy over the acquisition of land in Singur in West Bengal for an automobile project raises larger issues. The plight of displaced and project-affected persons across the country shows that it is the development pattern, nature of rehabilitation packages and the “public purpose” declared by the state while acquiring land that need to be debated and redefined.

Walter Fernandes¹

1.1 Background Study

It is said that property is the fruit of man's labor.² Locke was the pioneer of private property who indeed stands alone to believe that men had the right to property even in the state of nature. There was a commonly held belief that property must be used for the good of the community. To prevent the abuse of property it should not remain accumulated in the hands of few. Locke did not challenge the form of Hobbes's argument³ but sought the terms whereby

¹ *Singur and the Displacement Scenario*. Economic and Political Weekly. January 20, 2007

² Jain, H.M. *Right to Property under The Indian Constitution*. Chaitanya Publishing House, 1968.

³ Hobbes's account is based on a system of limited government. According to Hobbes, human beings are unable to control their appetites, passions and ambitions in a state of nature. The state of nature is a state of war where every man is pitted against every man. There is a need to develop the overall personality of the individual, promote the growth of art and culture, and give way to learning and acquisition of knowledge. Hobbes believed that the individual has to pay a price for order and the price is surrender of his/her liberty and property to an absolute sovereign. The power must reside in that single sovereign and no individual can oppose the sovereign's command. Locke disagrees with Hobbes on the grounds that individual in the state of nature lived in peace and harmony, governed by “reason” rather than motivated by selfish interests. For Locke, individuals could be in a state of war with each other if there is no government and thus laid the foundation for a representative government.

individuals assumed sovereign power. Locke stressed on the need to have a set of institutional arrangements that would allow individuals to escape the uncertainty and risks of social disorder without having to surrender to the sovereign the full complement of individual rights.⁴

Locke laid emphasis on individual natural rights including the right to obtain and hold property. He is the pioneer of a school of thought that regards the “right to property as a man’s supreme natural right and a limitation upon the state.” Even his followers held that in a civilized society men must be able to assume that they control, for purposes beneficial to themselves, what they have discovered or appropriated to themselves, what they have created by their own labor, and what they have acquired under existing social order.⁵

The first possession rule, according to Locke, works for two separate reasons. First, talent and labor are not owned in common but by each person individually. “...every man has a property in his own person; this nobody has any right to but himself. The labor of his body and the work of his hands we may say are properly his.”⁶ Second, “when labor is mixed with property, ninety-nine percent of the combined value is attributable to labor.”⁷ Locke also noted that labor can acquire external things only when there is enough good left for others. The property thus acquired by the individual must be for beneficial use and not for mere waste as it is the result of his hard work. He did consider it unethical for one person to take everything from the common pool, to the necessary exclusion of others.

⁴ Jain, H.M. Op-cit.

⁵ Epstein, Richard, A. *takings: Private Property And The Power Of Eminent Domain*. Harvard University Press, 1986.

⁶ Locke, John. *Two Treatises on Civil Government(Everyman’s)*

⁷ Ibid

He laid the foundation stone for the theory of a representative government whereby the sovereign no longer controls the surplus. He argues that the “organization of state does not require the surrender of all natural rights to the sovereign.” He idealized a system of governance whereby the net benefits of government will reside in the hands of the people at large. For Locke, the rights of the sovereign are derived only from the individuals whom it represents in any given transactions. Moreover, the state itself does not furnish new or independent rights, qua sovereign, against the persons subjected to its control. In short, the sovereign has no absolute powers to generate rights.⁸ It can acquire nothing by simple declaration of its will. It has to justify its claims in terms of the rights of the individuals whom it protects. When a state acquires a private property and transforms it into public property, it should provide for compensation to justify its claims. The private rights of individual must be preserved as much as possible even after the formation of civil society-modified only to secure internal and external peace for which the political power is necessary.⁹ Each and every transaction between the state and the individuals can be seen as a transaction between private individuals, some of whom have the mantle of sovereignty while others do not.¹⁰

One of the most significant contributions of Locke lies in his analysis of the critical role of private property in the overall scheme of governance. Private property represents “a sum of the goods that the individual gets to keep outside of the control of the state.”¹¹ “By setting certain elements of value outside of public control, Locke provided an implicit answer to Hobbes’s challenges by outlining a

⁸ Epstein, Richard, A.Op-cit, 1985

⁹ Epstein, Richard, A. Op-cit, 1985, p.13

¹⁰ Ibid.

¹¹ Epstein, Richard, A.Op-cit, 1985.

rule whereby the sovereign rule no longer generates monopoly profits.”¹² In Locke’s words, “the supreme power cannot take away from any man any part of his property without his own consent. For the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property, without which they must be supposed to lose that by entering into society, which was the end for which they entered into it, gross an absurdity for any man to own.”¹³

Locke thus stood alone in his belief that men had the right to property in the state of nature. Irrespective of whether property should rest in the hands of the state or the individual, every thinker held one unanimous view, i.e. property must be used for the good of the community. Locke also laid the foundation for 19th century capitalism where we witnessed strong defenders for free trade and private sector enterprises. However, critics condemned the system of “unrestrained private property and favored the growth of socialistic theories.”¹⁴ Harold Laski¹⁵ categorically stated that a political system in which rights are built upon property is one in which the property-less will have no rights. Private property shall yield to social purposes and for this the state must intervene and expropriate private property for public purposes.

In independent India, right to private property was included in the List of Fundamental Rights. Right to property as a Fundamental Right proved to be a serious obstacle in Nehru’s vision for a socialistic developmental path for India. The idea that private property shall yield to social purposes was applied and in due course of time the right ceased to be a Fundamental Right. It started with the

¹² Epstein, Richard, A. (1985). Op-cit, p.13

¹³ Locke, John. *Of Civil Government*, 1960. p.19

¹⁴ Jain, H.M. Op-cit.

¹⁵ Laski. *A Grammar of Politics*, London, 1957.

amendment of Article 31 of the Indian Constitution and witnessed the gradual erosion of the right to property. Right to property ceases to be a fundamental right and its removal from Part III of the Indian Constitution makes things easy for any government in power to move ahead with its radical programmes in the socio-economic sphere.

1.2 Erosion of Right to Property in India: Road to Mass Displacement

K.M.Munshi had rightly said that one of the toughest battles that were fought among the constitution makers was with regard to the right to property and whether it should be considered a fundamental right or not. As the nature of debate goes, there were two schools of thoughts that held two different views. One school of thought regarded property as a changing concept that should be left to the discretion of the Parliament. The other school of thought considered it necessary to be included in the fundamental rights as it was necessary to uphold the democratic society which the Constitution makers had envisioned.

The Nehru-Pant forces supported the supremacy of the Legislature and fought against John Matthai, the then Finance Minister of India, and his group. Matthai and his group members held that there must be provision for adequate compensation to uphold the democratic status of the nation. A long-drawn out debate found a solution in the form of Article 31(2). The Constitution of 1950 had a two-fold provision to protect the right to private property. First, it guaranteed every citizen the right to property by any lawful means (personal earning, inheritance or otherwise); to hold it as his/her own and dispose it of freely except

under, (a) reasonable restrictions to serve the exigencies of public welfare and, (b) any other reasonable restrictions imposed by the state to protect the interests of any Scheduled Tribe.¹⁶ Article 31(2) laid down the parameters for the acquisition of property by the state for public purpose. Clause 2 of Article 31 categorically mentions that if the state wants to acquire or requisite property from any individual it could do so only when, (a) the acquisition/requisition is for a public purpose and, (b) when the law for acquisition of property is passed, it must provide for payment of compensation to the owner “either by fixing the amount of the compensation or by specifying the principles upon which it is to be determined and given.”¹⁷ The eminent domain theory was enunciated by the framers of the Indian Constitution to ease out the process of acquisition irrespective of the wishes of the property owner. The public purpose clause justified acquisitions of private property by the state provided that compensation was paid to the owners.

The uneasy relationship between the judiciary and the legislature was apparent since the abolition of Zamindari rights. It paved the way for various amendments that were made regarding the right to property and in due course we saw the erosion of this right. The Zamindars did enjoy some undue benefits during the colonial rule. The safety road towards agrarian reforms was essayed with the abolition of zamindari rights and compulsory takeover of lands.

Amendments to the property Article started in 1951, until we saw the gradual erosion of the right as a fundamental right into only a constitutional right. The

¹⁶ As mentioned in Article 19(1) (f).

¹⁷ Fadia, B.L. *Indian Government and Politics*. Sahitya Bhawan Publications, 2007. Clause 3,4,5,6 lays down the provisions for the assent of the President (31.3) and how the assented law shall not be called in question in any court on the ground that it contravenes the provisions of the state (31.4).

first Amendment of 1951 was indispensable for the realization of agrarian reforms in India. The 1951 amendment inserted Article 31A and 31B in the Constitution. Article 31A provides that “no law providing for the acquisition by the state of any estate or of any rights therein shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any part of the rights conferred by any provision of Part III. Article 31B corroborated thirteen Acts and Regulations specified in the Ninth Schedule of the Constitution. These Acts and Regulation “were made beyond the pale of challenge as being violative of Articles 14, 19 and 31 of the Constitution.¹⁸

The Fourth Amendment of 1955 elucidates the position that though compensation is a necessary precondition for compulsory acquisition of land, the quantum of compensation was to be decided under the exclusive jurisdiction of legislature and that the question of adequate compensation was outside the purview of judicial review. The amendment also inserted Article 31(2A) by which a law that does not provide for the transfer of ownership or right of possession of property to the state or a corporation owned and controlled by the state “shall deemed to be a law for compulsory acquisition or requisitioning of property as envisaged in Article 31(2) of the Indian Constitution. Few modifications in Article 31B were made especially to protect such acquisitions/ possessions of property against Article 14, 19 and 31.

The Seventeenth Constitutional Amendment of 1964 broadened the definition of “estates”¹⁹ so as to include any land covered under the Ryotwari settlement as well as other land in respect of which provisions are normally made in land

¹⁸ Fadia, B.L. Op-cit, 2007.

¹⁹ Article 31A(2)

reform legislation. In addition to this, forty-four more acts were included in the Ninth Schedule of the Constitution.

Following these series of amendments was the famous Golaknath Case where the power of Parliament to amend the Constitution so as to do away the fundamental rights of the citizens was called in question. The Golaknath case and the Bank Nationalization Case of 1970 had a major impact on the Constitution of India and the result of this impact was quite obvious. The Twenty-fourth and Twenty-fifth amendments were introduced in 1971 that declared that Parliament had the right to amend any part of the Constitution including those contained in Part III. The Twenty-fourth amendment became necessary in order to give effect to the Directive Principles and to attain the objectives as laid down in the Preamble to the Constitution. The Twenty-fifth amendment replaced the word “compensation” for “amount,” and also made it clear that Article 19(1) (f) shall not apply to any law relating to acquisition or requisitioning of property for a public purpose. Article 31C was introduced which provided that “no law containing a declaration that is for giving effect to such a policy shall be called in question in any court on the ground that it does not give effect to that policy.”

The Twenty-ninth Amendment of 1972 was introduced to save the government from the embarrassment of Kerela Land Reforms Act. Introduced by the Kerela State Legislation in 1969, the act did not oblige the government to pay compensation at the market value incase a land was acquired by the state. 1969 Kerela Land Reforms Act was included in the Ninth Schedule²⁰ to the Constitution and was duly rendered protection.

²⁰ The Ninth Schedule was once considered to be a well thought out constitutional mechanism. The need for quick implementation of certain critical laws in order to restore social order necessitated the presence of Ninth Schedule in the Indian Constitution. However, with time the Ninth Schedule proved to be a convenient shield for the Legislature in order to keep such laws outside the purview of judicial review.

The famous Keshavananda Bharati Case, 1973²¹ challenged the validity of Article 31C and declared it null and void since it takes away invaluable Fundamental Rights of the citizens of India. The Court further held that though the Parliament has the power to amend the Constitution of India, its amending power does not extend to damaging or destroying the essential ingredients of the Constitution. The Keshavananda Bharati case seemed to have asserted the independent nature of the judiciary and the power to review all laws passed by the Parliament. The Parliament impervious by the Keshavananda Bharati Case, went ahead with Forty-second (1976) and Forty-fourth (1978) amendments. The introduction of 1976 amendment gave the Parliament the power to include within its protection any law to implement any of the Directive Principles itemized in Part IV of the Constitution and not merely Article 39(b) and Article 39(c).

The Congress party like a termite had eaten into the vitals of Article 31 with a series of amendments. Whatever was left was wiped out by the Janata Party Government which eliminated the right to property altogether from the list of Fundamental Rights in Part III. The 44th Amendment led to the complete erosion of the right to property from the list of Fundamental Rights and was rearranged in the form of a new article- Article 300A. By placing it under 300A²², the right to property no longer remains a fundamental right but only a legal right. The result is very obvious. If the state takes away the property of an individual “without legal authority or in excess of the power conferred to by the law in this behalf,” the individual can no longer seek justice under Article 32. There is no speedy remedy for compulsory acquisition/requisition of land by the state and one can only seek justice, if any, from the High Court under Article 226 or by filing an ordinary suit.

²¹ Keshavananda vs. State of Kerala (1973) 4 SCC 255.

²² Under Article 300A, “No person shall be deprived of his property save by authority of Law.”

A law is necessary to deprive a person of his/her property but the content of the law lies within the discretion of legislature. This discretion provides no room for speedy justice to property owners whose land has been acquired for some “public purpose.” The process of gradual erosion of property rights started with Nehru’s regime and culminated during the rule of Janata Party Government in 1970’s. In the process, the right to property created a lot of controversy and almost severed relationship between the Legislature and Judiciary. The socialist developmental path that was once envisioned by Nehru was realized with the removal of this right from the list of Fundamental Rights.

The erosion of the right to property thus left very little space for the people to challenge the actions of the government. It eased out the entire process of acquisition and monetary compensation was seen as the moral baton to convert such appropriations as acquisitions. The colonial Land Acquisition Act of 1894 had already established the eminent domain doctrine whereby the state can have access to all land and related resources within its territory. The relevance of this doctrine is of paramount importance today because the state plays an important role as a mediator and it is the only institutionalized agency that can acquire land on behalf of companies. After independence, the colonial legacy followed with the abolition of Zamindari rights and removal of the right to private property from the list of Fundamental Rights. Successive amendments reduced the bargaining power of the judiciary vis-à-vis the legislature and the power of the judiciary is only reduced to hearing individual objections. The concerned Courts do not have the power to decide whether the purpose behind the acquisition was a public purpose. Displacement was seen as an inevitable outcome of such takings by the state in the name of “public purpose.” Today, none of the mega projects confirm to “public purpose” as most of them is profit-driven. Development remains

confined to economic growth, which inevitably causes a sense of dissatisfaction and anger among those who are directly affected as a result of acquisitions for mega projects. Their weak bargaining power vis-à-vis the state made democracy a form of protest and resistance. A sense of despair, anger and resistance to state actions invariably took the form of an all India people's movement against displacement. In this entire discourse on displacement versus development, the role of people's movement deserves a special mention. Rehabilitation and resettlement policy of 2004 is an outcome of such resistance. It has set into action a motion to de-legitimize the colonial act and force the state to think beyond monetary compensation.

1.3 Displacement: An Inevitable Outcome of Development

Mass displacement has emerged as an unfailing companion of the development project.²³ The discourse on rehabilitation owes its origin to the rising resistance towards mass scale displacement, sometimes even of the entire community. The loss of livelihood and loss of access to land and natural resources made rehabilitation the only solution to alleviate the plight of those who refused to be passive "sacrifices" in the "larger public interest."²⁴ The massive protests and resistance by displaced persons have prompted the state to move beyond the paradigm of identifying cash compensation as rehabilitation. Cash compensation has always been a bone of contention between the state and individuals.²⁵ Epstein

²³ Ramanathan, Usha. *Rehabilitation: Where the Truth Lies*. URL:
<http://www.thehindu.com/2006/03/31/stories/2006033108571100.htm>

²⁴ Ramanathan, Usha. "Eminent Domain, Protest and the Discourse on Rehabilitation" In: Cernea, M.M. and Mohan, H. (eds). *The Compensation Dilemma: Can Compensation Prevent Impoverishment?* Oxford University Press: New Delhi

²⁵ Here individuals refer to the displaced persons whose livelihoods have been affected as a result of developmental projects.

made use of the theory of eminent domain (or takings) to understand the “proper relationship between the individual and the state.”²⁶

In independent India, the doctrine of eminent domain struck its roots when the Zamindars entered into an early constitutional contest with the state. In order to give effect to the agrarian reforms, as envisioned by Nehru, the government went ahead with the abolition of zamindari rights.²⁷ The doctrine of eminent domain dictated the understanding of state power over all land within its territory.²⁸ When the abolition of Zamindari rights was being essayed, the Supreme Court traced the doctrine of eminent domain to Hugo Grotius (1625). In his work, *De Jure Belli et Pacis*, Hugo stressed that, “*the property of the subject is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in cases of extreme necessity, ... but for ends of public utility, to which ends those who found civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property.*” The power of eminent domain thus gives the state the power to acquire land without the owner’s consent for a predefined public purpose. Public purpose becomes the prerequisite to acquire private lands and payment of compensation becomes an essential element of the valid exercise of such powers.

The colonial Land Acquisition Act (LAA) of 1894 conforms to the eminent domain doctrine whereby the state has the power to acquire land, provided the

²⁶ Epstein, Richard, A. Op-cit, 1985. The eminent domain clause in the American Constitution categorically provides for just compensation incase a private property has been acquired for a public use.

²⁷ The Zamindars enjoyed undue benefits during the colonial rule.

²⁸ Usha Ramanathan. Op-cit.

acquisition is for a public purpose. The definition of public purpose is still not clear, as the government continues to acquire land for private companies in order to promote industrial development. The Tata Motors Factory that is coming up in Singur, West Bengal defies the validity of the definition of “public purpose”- a definition that is yet to be defined clearly. Chapter 2, *Land Acquisition Act: Exclusiveness and Arbitrariness of the Law*, mainly argues on the effectuality of the colonial act in present day scenario. The Act enables the government to seize land from its owners under the pretext of it being necessary for the lofty “public purpose”. Successive amendments to the Act did not provide for any scope towards the resettlement and rehabilitation of the people who have been uprooted as a consequence of the acquisition of land under such clauses. The Act provides very little space for the land losers to restore back their land from the government and the situation has worsened after the right to property was deleted from the list of Fundamental Rights and put under Article 300-A. The chapter seeks to explore the complexity of the LAA and how successive amendments to the act eases out the process of acquisition leaving the land losers with little or no compensation at all. It also identifies three interested parties who are at conflicting interest with each other, namely, the people who lose out on their people, the government who acquires the land for a “public purpose” and third, the requiring bodies whose interests consist of the desire to acquire the required land in as little time as possible and with the minimum of costs incurred. The chapter is only an attempt to understand the law and the high handedness and lack of orientation on part of the government to move on with the acquisition process with special reference to Singur, West Bengal.

The eminent domain clause was pitted against owners of large tracts of land within the Indian Territory. The whole idea of seeking distributive justice and

equitable distribution of property prompted the state to go ahead with large scale acquisition of private property. As mentioned earlier, the Zamindars who were the prime targets challenged this action of the state on specific grounds. First, the very purpose of eminent domain doctrine requires that the land should be acquired by the state for a public purpose. The acquisition of zamindari lands was specifically focused on denial of zamindari rights rather than for a public use. Second, compensation, an essential element for such takings, was “illusionary” and hence called for judicial intervention. Much of the judicial literature was exhausted in locating as to what constitutes compensation. An adequate meaning of the word compensation would ward off all possible difficulties in the path of land reform measures and make abolition of Zamindari rights a reality. Eminent domain remains a “doubtful word.”²⁹ Each and every time the state moves ahead with its land acquisition measures, it sends a word of caution to social activists, academicians, legal researchers and people’s organizations and so on. Compensation remains a “bone of contention,”³⁰ public purpose moves further and further away from “justiciability.”³¹

1.4 The Path Towards Rehabilitation

Although the entire discourse on rehabilitation owes its origin to displacement, it is relatively a new phenomenon. Cash compensation is still the most sought after measure for rehabilitating displacees. In Singur, West Bengal, the “persons’ interested” were identified and compensated at the market value.³² The displaced

²⁹ *Dwarkadas Shrinivas of Bombay v. Sholapur Spg. & Wvg. Co. Ltd.* 1954 SCR 674 at 731-2.

³⁰ Ramanathan, Usha. *Displacement and the Law*. 31, Economic and Political Weekly, 1996.

³¹ Ibid

³² Note: The estimation of the market value of the land in Singur was not based on recent valuation.

persons are supposedly paid a solatium, i.e. a sum which is equivalent to 30% of the market value awarded, because of the emotional value attached to the land that is acquired.

The definition of rehabilitation is much broader than cash compensation. Rehabilitation is all about minimizing the losses suffered by displaced persons. Apart from compensating them with cash, it involves providing them with alternate sources of livelihood. It involves doing away with the imperfections that has been followed for years by the state when they acquire lands for mega projects. The prime concern is of providing the displaced people with an alternate land- a land that provides them with shelter; a land that allows them to cultivate and overcome their psychological, social and economic trauma associated with displacement. As most of the state takings are for private enterprises, they hardly benefit the people who give away their lands to the state. Such takings are mainly focused towards promoting the economic growth of the region rather than moving towards an overall developmental path. But lack of commitment on behalf of the Indian government to move ahead with a strong rehabilitation plan made rehabilitation an indefinite answer to displacement.

Mass displacement proved to be inexpensive for the state for long. Most of the displacees are poor landless people and dependents who derive their livelihood from the land. Absence of legal rights excludes them from the compensation package which in turn proves to be inexpensive for the state. The reason why an effective rehabilitation policy is still a distant dream is because the cost involved is much more than just compensating those who have legal rights over the land. In the long run, the trauma involved with displacement affects the livelihood pattern for the displacees- a fact known but ignored till yet. The costs usually fall on the

displacees to bear. Not recognized under law as being entitled for compensation, they made unwilling “sacrifices” for a developmental project that debarred their development. In the lure to attract investors in the state, the displacees were invisibilized and suppressed in the wake of economic development.

The growing effect of people’s movement all over India had sent a clear message to the Indian government. The 1994 rehabilitation plan clearly stated that, “... the project affected people are no longer in a mood to suffer displacement along with its concomitant attributes like occupational degeneration, social disorientation, pauperization, loss in dignity and often getting cheated of the compensation amount which serve to make the experience a trauma. This has given rise to protest movements, marked by a growing militancy. An interesting feature of the growing protest movement has been the creation of a national awareness of the problem.”³³

When protests and resistance by displaced people took the form of a massive movement, it did have a dramatic effect on the state policies. The movement challenged the legitimacy of the colonial Land Acquisition Act of 1894 and debated on the notion of “development” that invariably led to mass impoverishment in addition to ‘other traumatic psychological and socio-cultural consequences.’³⁴ The movement forced the state to reconsider its priorities and in due course of time it came out with remedy- rehabilitation. During late 1970’s and early 1980’s the World Bank had included social issues associated with involuntary resettlement as part of the projects financed by the bank.

³³ Para 2.1 and 2.2 of the 1994 Draft National Rehabilitation Policy.

³⁴ National Policy on Resettlement and Resettlement for Project Affected Families, 2003, para 1.1

Rehabilitation became the buzzword and impacted heavily on the “policy framework set out in documents emerging in India.”³⁵ Most mega projects (Narmada Dam in particular) receives funding from World Bank or similar agencies. The demand for a rehabilitation policy with predetermined features had forced the government to come up with a proper project plan containing rehabilitation measures. However, not much was achieved even though a series of draft national rehabilitation policies for project affected persons came up with successive improvements over the previous one. In February 2004, the NDA government finally came up with a National Rehabilitation Policy- a policy that was weak and far from satisfactory as it ignored the social and psychological affects of displacement and had put several limitations on its rehabilitation package. The *pari-passu* principle thus becomes a very important aspect of rehabilitation. Going by the basics of this principle, a project can be allowed to proceed only as, and after, rehabilitation of the displaced is completed.³⁶

Mass displacement has always been regarded as an “unfortunate side-effects of the process of economic growth. The initial deprivation of the displaced has been conveniently used to suggest that development could only benefit them.”³⁷ With this mindset, the West Bengal government also moved ahead with land acquisition in Singur, West Bengal. Considering it as a natural process of development and industrialization that requires land, the state went ahead with its economic ventures without being accountable to the “probable land losers.” Chapter 3, *Development versus Displacement: A Case Study of Singur*, will take into account how displacement becomes an inevitable outcome of development-economic development. The Singur disaster is a result of the “irresponsible

³⁵ Ramanathan, Usha. Op-cit. 2006.

³⁶ Ramanathan, Usha. Op-cit. 2006.

³⁷ Ramanathan, Usha. Op-cit. 1996.

design” of the Left Government. “Slackening pace of industrialization; flight of capital and prolonged industrial unrest has taken its toll”³⁸ on the economy of West Bengal. In its attempt to woo big industrial units in the state, the government gave in to their demands and acquired one of the most fertile lands in Singur for the proposed Tata Motor’s Factory. The chapter deals in phases the nature and form of displacement in Singur, the current industrial and agricultural output in the state, the need for industrial growth and how development is equated in terms of economic growth only. The obvious fact that emerges from the study is that the rapid pace of industrialization will displace thousands and thousands of people if rehabilitation and resettlement process continues to be a big failure. Opposition parties in West Bengal do not have a much impressive presence as they themselves are involved in cases of gross human rights violations. Democratization is a distant dream as people’s movement is reduced to nothing more than a protest involving bloodshed, killings and mass arrests. As the Left government moves ahead with its economic plans, displacement problems seem to deepen and, with no rehabilitation policy in place the future of displacees seems to be bleak.

The mega projects in West Bengal have used 47 lakh³⁹ acres of land which in turn has affected 70 lakh persons.⁴⁰ 36 lakh⁴¹ fell into the category of displaced persons (DP’s) and 34 lakh⁴² as Project Affected Persons (PAP’s) whose

³⁸ Guruswamy, Mohan (2005). *Industrial Decline in West Bengal*.
<http://www.cpasind.com/articles/mg-05-03-17-industrial-decline-west-bengal.html>. 17-03-2005

³⁹ Fernandes, Walter. *Singur and the Displacement Scenario*. Economic and Political Weekly. January 20, 2007, pp 203-206.

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

livelihood has been affected even though there was no physical relocation. The vulnerable sections remain the most impoverished. Out of the 70 lakh people⁴³ who have either been displaced or affected by mega projects in West Bengal 20% are tribals and 30% are dalits. Majority of them are not legal owners of the acquired land and hence remain silent sufferers. The poor rehabilitation record in West Bengal aggravates the problem of the displacees and as independent studies show, the cost of displacement is borne by them rather than by the state. Mass displacement thus becomes an inexpensive path for the state as they are liable to compensate only legal owners of the acquired land. 1990's saw a flurry of rehabilitation policies due to pressure from the World Bank to withdraw if human rights conditions governing the rights of project affected persons were not met and did not satisfy the activists in the West. The Orissa, Karnataka and Rajasthan Rehabilitation Acts came up as a result of this pressure from the World Bank and not because the policy makers were "sincere in their commitment to the people"⁴⁴ who are affected by mega projects. West Bengal doesn't have a rehabilitation act in place and this is one of the major reasons why the displacees of Singur were given huge cash awards. Chapter 4, *The Problem of Compensation: A View into the Economics and Politics of Rehabilitation and Resettlement Policies*, is an attempt to understand how the gradual erosion of the right to property has impacted the lives of those whose lands are acquired by the state in the name of public purpose. Cash compensation, as mentioned, has time and again proved to be inadequate as it fails to compensate those whose livelihood has been affected by such acquisitions. Moreover, "takings that involve commonly held resources"⁴⁵ will mean that no compensation will be paid as no individual can claim to have sole ownership over such resources. People with disputed or no

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Singh Jaivir. *Separation of powers and the erosion of the "right to property" in India*. Springer Science+Business Media, LLC 2006.

legal rights are automatically ruled out of the compensation award, leave alone rehabilitation. The chapter also seeks to explore how rehabilitation remains dominated by the sociologists and anthropologists and why we need more economic analysis of resettlement and rehabilitation policies. The livelihood and impoverishment risks, the cost-benefit analysis, the post-displacement cost borne by the displacees are some arenas where economic analysis is lacking and needs serious involvement.

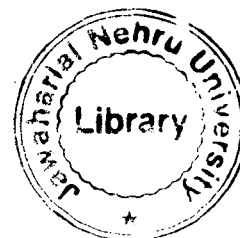
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 The concluding chapter discusses the impact of the entire debate between displacement and development. There are too many questions that remain unanswered and defy logic, especially the lack of accountability on the part of government. The colonial act has given rise to multi-faceted problems that the government has failed to recognize. The Indian government seems to be enjoying the colonial hangover and validates its application even today. The dissertation identifies the LAA, 1894 as the root problem that needs to be addressed first. The lack of political will and accountability on part of the Indian government continues to plague the functioning of the Indian polity and has left its impact on the displacement scenario as well. Till date, the government is struggling/unwilling to bring out a strong rehabilitation policy that will minimize project induced displacement.

The whole paradigm of equating development with economic growth is creating an adverse impact on those who become the probable losers in the path of development. Private profit seems to have become the sole criterion.⁴⁶ Today, state takings are mainly focused towards encouraging private investment and push forward the industrial development of the region. Impoverishment risks, food

⁴⁶ Fernandes, Walter. Op-cit. 2007

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security and right to a dignified life for the displacees take a backseat and are not considered in the agenda for development. This restricted notion of development has invited criticism from all sections of the society that questions the existing development paradigm and seeks to find an alternative where the benefits of the project reach those who pay the price.

CHAPTER 2

The Land Acquisition Act, 1894: The Exclusiveness and Arbitrariness of the Law

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2.1 Introduction:

The efforts of the Indian government to review the colonial Land Acquisition Act (LAA) of 1894 in 1998, witnessed intense criticism from social activists, voluntaries bodies, legal scholars, academicians and other people's organizations and so on. In 1998, the Ministry of Rural Development (MoRD) reviewed the law and promulgated a draft of the Land Acquisition (Amendment) Bill 1998. Two major areas of contention arose as a result of this. First, the displaced people or the "probable land losers"⁴⁷ have nothing much to gain from successive amendments of the colonial act. Any effort towards amending the colonial act will ease out the process of acquisition and enhance the scope of its misuse by persons in power even though it identifies adequate compensation to be given to the displacees. Second, the requiring bodies and industry maintain that the proposed draft falls short of fulfilling their demand of easier acquisition of land.

Reorganizing displaced people seems to be a Herculean task, especially when we take into consideration the unplanned mode of displacement. Law cannot be thought of as an automatic cure to all problems arising out of mass displacements.

⁴⁷ Asif, Mohammad. *Land Acquisition Act- Need for an Alternative Paradigm*. Economic and Political Weekly, Vol. 34, No. 25, June 19-25, 1999.

It is a tool and if handled properly can be of some use. It is the implementation that counts most in issues related to mass scale displacement. Displacement was never the big issue in pre independence India. There was more land than people. But as the rural Indian population is growing, displacement has become one of the most serious concerns as it involves loss of livelihood, land complicated further by the destruction of environment.

The issue of displacement and rehabilitation has become one of the most important social issues over recent years. This is one social issue that has provided a platform for intense debate to academicians, social activists and planners. The history for the acquisition of land for developmental purposes is not new. The Land Acquisition Act of 1894⁴⁸ was enacted by the British and was particularly meant for acquisition of small pieces of lands, for roads, public meetings and so on. There were hardly any public works like large dams submerging vast areas and displacing large number of human settlements.⁴⁹ Subsequent amendments in the Act did not bring any dramatic changes in its scope and this has been rightfully pointed out by Upendra Baxi (1998). Baxi stressed that "...In so far as it addresses itself to the right of the displaced persons, (it) is obviously limited to acquisition of lands for "public purposes" and "compensation" for acquisition. When villages are submerged, people who have no land are also displaced. Today, they depend on ad hoc government resolutions (GR). Non consideration of the landless, artisans, self employed, old, sick, infirm and very young persons for compensation, wholly vitiates Part III and Part IV of the Constitution, especially Article 21."

⁴⁸ From henceforth Land Acquisition Act, 1894 will be termed as Act.

⁴⁹ Jain, Sobhita and Madhu Bala. *The Economics and Politics of Resettlement in India*. Pearson Longman, 2006, p.82

The Act, as mentioned, is more than a hundred years old and is inadequate to deal with issues of large scale displacements. The Act has been constructed specifically to deal with the rights of the individual dislocated person. Thus, it naturally finds itself unable to accommodate the complexities qualifying mass displacements.

The LAA, 1894 is the law that enables the government to seize land from its owners under the pretext of it being necessary for the lofty “public purpose”. Successive amendments to the Act did not provide for any scope towards the resettlement and rehabilitation of the people who have been uprooted as a consequence of the acquisition of land under such clauses. Loss of land and livelihood is compensated only in terms of monetary value, which is grossly inadequate. A few state government projects like the NTPC (National Thermal Power Corporation) and Coal India Limited (CIL), have some guidelines on the resettlement and the rehabilitation of displacees. Only Maharashtra and Madhya Pradesh have made some laws for “resettlement of Project Displaced Persons (PAP’s), which will be discussed later.

2.2 Historical Background of the Land Acquisition Act, 1894

It was during the struggle of independence that the political leaders realized that political independence is incomplete without social and economic reforms. The analysis of various laws and provisions of the constitution by the Supreme Court and High Court reveals a commitment towards the creation of an agrarian structure based on justice and equality. It was also accepted that the Permanent

Settlement Act of 1793 must be repealed and the actual cultivator of the land should be granted ownership rights.

The British government introduced the first piece of legislation which legalized the entire process of acquisition. The Bengal Resolution (1) of 1824 “enabled the officers of the government to acquire land or other immovable property for roads, canals or other public purposes or payment on fair value.”⁵⁰ The Building Act, XXVII of 1839 was the next legislation introduced in the Bombay Presidency. The Act formalized acquisition of land for altering or widening and existing public road, street, drainage system or construction of new public roads and streets and so on. The Madras Act adopted in 1852 was also generalized on the lines of Building Act. It was only in the year 1857 that a central legislation for the whole of British India was enacted and it repealed all the previous acts related to acquisition of land and other properties. This Act empowered the Collector to fix the amount of compensation by agreement. But if there was no such agreement then the dispute had to be referred to arbitration. This decision would then be considered final in this regard. The Act was amended twice, once in 1861 and again in 1863. The method of settlement of compensation by arbitration was considered to be unsatisfactory as the arbitrators were found to be incompetent and corrupt.⁵¹ The Act X of 1870, provided for a reference to a Civil Court for determining the amount of compensation, when the compensation amount could not be settled by agreement by the Collector. The Act XVIII was passed in 1885 that provided for the grant of compensation to the ‘owners of the mines situated under land sought to be acquired by the government.’⁵²

⁵⁰ Ibid, p.138.

⁵¹ Mathur, Hari Mohan, Op-cit, p.139.

⁵² Ibid.

The Land Acquisition Act, 1894 was the final improvement done after Act of 1870 and is still prevalent today. The Act was amended a number of times: twice in 1914, in 1919, 1920, 1921, 1933, 1938 during the British regime. After India attained independence, the Act was adopted for “all the provinces in India,” under the Indian independence (Adaptation of Central Acts and Ordinances), 1948. Under the Adaption Order of 1950, the words “whole of India,” was further qualified to include the words “except part B of the states.” The State Reorganization Act, 1956 further qualified the words “except Part B of the states,” and substituted it by the words, “all the territories which immediately before 1 November 1956 were comprised in Part B States.”

The Constitution of India brought the subject matter of acquisition and requisition of property under Entry No. 42 of the Concurrent List(transferring Entry No.33 of List 1 by the VII amendment of the Constitution in 1956), and empowered the Union Government to legislate on the subject and control the state legislations on the subject to keep the same in line with the Central Act.⁵³ Moreover, the second proviso of Article 31A in the Indian constitution also restricted the state powers to acquire any piece of land “held by a person under his/her personal cultivation and within the ceiling limit applicable to him without the payment of compensation at a rate which shall not be less than the market value of such land or property.”⁵⁴ Article 19⁵⁵ of the Indian constitution also protected the fundamental right to property of Indian citizens but now it is only a constitutional right under Article 300 A.⁵⁶

⁵³ Ibid, p.139

⁵⁴ Mathur, Hari Mohan. Op-cit, p.140

⁵⁵ Article 19 of the Indian constitution provided that, “no person shall be deprived of his property saved by authority of law.”

⁵⁶ Article 300 A was inserted by the Constitution (44th Amendment) Act, 1978.

In independent India, the Act was amended in the years 1967 and 1984 in order to make the acquisition process even quicker and ensure a more reasonable award for compensation. The 1984 amendment lays down a procedure by which the land is to be acquired and also provides for payment of compensation, in the form of cash. The reasonability factor was totally absent from the 1984 amendment. It still shows no signs of concern for the displaced people, leave alone their suffering and loss of livelihood. It did not mention of any resettlement plans, and was unwilling to take up the responsibility of rehabilitation. All this while, monetary compensation was the only debated issue. One and all remained mute about affecting any effective rehabilitation and resettlement policies for the displacees. While there is a provision that the Collector can instead of awarding money as compensation, “make any arrangements with a person having limited interest in such land, either by grants of lands in same title, or in such a way as may be equitable having regard to the interests of the parties concerned.”⁵⁷ However, this proviso in the Act has nothing to do with resettlement and rehabilitation policies for the displaced people in mega projects.

The Act was not applicable to the states of Jammu and Kashmir, Rajasthan, Kerala and Nagaland till 1984. These states had their own self contained LAA, the broad scheme of which was more or less the same. The 1984 amendment act made the act of 1894 applicable to the whole of India again excepting Jammu and Kashmir.⁵⁸

⁵⁷ Mathur, Hari Mohan. Op-cit, p.140

⁵⁸ Jammu and Kashmir occupies and enjoys special position under the Constitution and still continues to be governed by the state (J&K) Land Acquisition Act, 1990.

In addition to the Act, there are other central as well as state laws⁵⁹ which allow the government to acquire land for certain specific purposes, especially planned industrial development, town planning and improvement, slum clearance and so on. It is the central government which basically determines the content of the law. The state governments have the power to amend the provisions of the Act under Article 246⁶⁰ of the Constitution.⁶¹ Any such changes made by the state should not stand in opposition to the provisions of the Act. Only under certain circumstances an amendment which is inconsistent with the provisions of the Central Government can be included and regarded as a valid one.⁶²

The Act undoubtedly confirms to the eminent domain doctrine “that asserts the rights of the state over land and related resources within its territory.”⁶³ The Act holds the validity of the doctrine even though it has been challenged globally. The doctrine of eminent domain is perceived to be a necessary right in order to promote the cause of public good. The clause of “public purpose” in the Act lays down the foundation of the doctrine through which the state acquires access to all land and related resources. The doctrine eases out the process of acquisition whereby the state can acquire the land without the owner’s consent. Public purpose becomes the prerequisite and compensation the moral baton to justify such appropriations as acquisitions.

⁵⁹ The Forest Act, 1927, The Coal Bearing Areas(Acquisition and Development) Act, 1957, The Slum(Improvement and Clearance) Act, 1956, DDA,1957, Maharashtra Industrial Development Act, 1967 and so on.

⁶⁰ Article 246 of the Constitution read with item 42 of list III in the Seventh Schedule to the Constitution.

⁶¹ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. *The Land Acquisition Act and You*. Multiple Action Research Group (MARG), 1990.

⁶² Article 254(2) of the Indian Constitution- Central Government holds the power to modify such amendment or declare it as invalid.

⁶³ Ramanathan, Usha. *Displacement and the Law*. 31, Economic and Political Weekly, 1996. (Source: www.ielrc.org)

We all know that land is often acquired for public purposes and thus it necessitates a law governing the acquisition of land. The root problem lies in government orientation because it is the government that decides and undertakes the actual acquisition work. Thus in the entire acquisition process the government can be either stringent, thus making the whole acquisition an arduous task, or lenient thus allowing for easy acquisition. Taking both the cases into consideration, it seems that the orientation of the government is either towards the needs of the land-loser or to the demands of the requiring body. In both the cases, the cause of overall general social good has failed miserably.

For a person who wants to understand the Act in simple words, the whole procedure of acquisition has been: (1) one requiring body places a request for land acquisition before the government represented by the District Collector. (2) The Collector after studying the proposal notifies the name. (3) The probable land losers are identified, following which land is measured and compensation is calculated. (4) if the government/ Collector is satisfied, compensation is awarded, notified land is acquired and transferred to the requiring body and even though the land-losers have accepted the compensation, those land-losers who are not satisfied with either the measurement of land, the declared compensation and the apportionment of the said compensation between the persons concerned, can approach the Courts for redressal.

The debate over the years has been mainly concentrated on the little space the law provides for land-losers. They can hardly have resort to any legal procedures which may effectively prevent their land from being acquired, more so when the requiring body has convinced the Collector of the necessity of the acquisition of land. The Act still remains Collector-centric, the same as that which had existed during the British rule where 'non-participation of the land losers' was not a

matter of question or unbounded concern. In the early decades of the 20th century, large tracts of land were acquired for different “public purposes” with the help of this law. The law was accepted as being successful since most of these acquisitions went on smoothly except for Mulshi Dam (1940) in the Madras Presidency, where land-losers protested for fair compensation. As part of the development drive in the post-independent period, more and more land was acquired with the help of this law or with some of its state-level variants, in order to build numerous large and medium scale industries, mines, roads railways and so on. The question which needs to be answered however is whether these acquisitions of property made under the pretext of it being “public purpose,” especially taking into consideration the fact that huge tracts of lands and homesteads were acquired were passed on to other interests. People’s resistance to acquisition of their lands is not the only challenge the law is facing today. The requiring agencies have been found on many occasions manipulating it. They use the “scare factor” to force people to vacate the acquired land. Especially in cases of acquisition of lands for mining purposes, mine owners, either public or private, have continued with the blasting occupation to force people to vacate their lands and houses. State departments have also continued with their dam construction work in order to evict the resistant people with a fear of submergence. Defining the Act becomes essential in order to highlight the lacunae in the Act and on what grounds common man can challenge the swift acquisition process that takes place with the help of this law.

2.3 Defining the Act:

(i) Related terms:

Land⁶⁴: It is important for us to know, as to what is actually the definition of land which authorizes the government the right to acquire. The very word “land” encompassed the ground, soil, earth, woods, forests, fields, lake or below it, i.e. minerals. All rights related this tract, like for instance, the right to collect rents and profits of the land, a right to fishery, a right of ferry, a right of way, the right to be a tenant to reside on the house which has been given on lease by the landowners, comes under the definition of land as mentioned in the LAA, 1894. Tenant rights come under limited rights or interests in the land and so it will be also regarded as “land.” Under the Act, “such limited rights of interests in the land cannot be acquired without first acquiring the land from which such rights arise.”⁶⁵ Limited rights do not have any such independent existence when acquisition of land is in process.

When the government decides to acquire land from the land owners, it must estimate the value of land taking into consideration the value of the limited rights or interests on such land. According to the rule, it is the legal owner of the land who is entitled to compensation. “Any person who claims a right as against the owner by virtue of an interest in the land created by the owner must establish this title.”

⁶⁴ Section 3(a): “the expression ‘land’ includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.”

⁶⁵ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.10

Person Interested, under Section 3(b)⁶⁶: “Person interested” basically indicates those who have an interest in the land which is being acquired by the government. The interest can be an absolute one or a partial one, i.e. of the tenant or the licensee. “Any person who claims to have an interest in the land in question is treated as a “person interested,” whether or not such a claim is a valid one. You should have or claim to have an interest in the compensation which is to be awarded for the land. In *Neyveley Lignite Corporation Limited vs. Special Tehsildar, (L.A.) Neyvely and Others* (1995) SCC 221, the Supreme Court held that persons interested included should also include beneficiaries⁶⁷ of the acquisition.

“Persons interested” does not include landless laborers, artisans, and forest land cultivators and hence they are not entitled to any kind of compensation. Their livelihood is dependent on the produce of the land and consequently excluding them from the ‘person interested’ adds grossly to the injustices meted out to them, as they are then left with no alternative mode of subsistence.

Public Purpose⁶⁸: The expression “Public Purpose” includes the provision of village sites in districts in which the appropriate government shall have declared by notification in the Official Gazette, that it is customary for the government to make such provision. “Public purpose,” as the term goes, generally means in the interest of the community and to a particular interest or purpose. The Act does not

⁶⁶ The expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land. Part 1. 3(b) of the Act.

⁶⁷ Beneficiaries are those on whose behalf the government acquires land, like for instance a local company or authority. The reason why beneficiaries are considered as “person interested” is because compensation is paid by the beneficiaries. So, they have the right to be heard when there is a claim for enhancement of compensation

⁶⁸ Section 3(f): “the expression ‘public purpose’ includes the provision of village sites in districts which the appropriate Government shall have declared by notification in the Official Gazette that is customary for the Government to make such provision...”

define the term but in due course gives examples of the same. The very expression “public purpose” was substantially expanded in the Act of 1984. The term “public purpose⁶⁹,” today includes,

- *Provision of village sites or extension or planned development of village sites. A village site is land reserved for being parceled out as house sites.*
- *Provision of land or rural or urban planning*
- *Provision of land for planned development of land from public funds under any scheme or policy of the Government and the subsequent disposal of such land b way of lease, assignment or sale.*
- *Provision of land for a corporation owned and controlled by the state.*

A body corporate established under an act of parliament, such as the Fertilizer Corporation, the State Trading Corporation, a co-operative society or a registered society administered or established by the government are instances of corporations owned and controlled by the state. It specially contains a provision that acquisition of land for a body corporate is to be regarded as a public purpose. This provision can be certainly misused and is potentially (and as has been proved in innumerable cases over years) detrimental to the interest of the community as it does not specify the purpose for which the land is to be acquired, this has been left to the discretion of the government. The provision of the Act can also be used to acquire land for other companies though such acquisitions may not be for “public purpose,” if they fulfill the conditions laid down in Sections 40 and 41. There are restrictions on land being acquired for private property in which the government holds atleast 51%⁷⁰ of the shares. Land can be acquired for private companies only for two purposes:

I. Constructing residences for workmen employed by it, or,

⁶⁹Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.15

⁷⁰ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral Op-cit, p.16

2. Providing amenities for workers colonies such as sewage or sanitation.

The Amendment Act of 1984 took into consideration the plight of the people displaced on account of acquisition of land for mega projects. It is evident from the fact that it contains provisions of land for “project affected” persons and has been specifically included in the definition of “public purpose.” The government till date has not been able to make full use of the provisions mentioned in “public purpose,” to ensure that the displacees get a fair deal. There is not a fixed and unalterable definition of public purpose to which we can adhere to. The definition varies with the times, the state of society and its needs.⁷¹ However the definition of “public purpose” remains contingent upon the discretion of the government, but this does not mean that such discretion should be abused to meet the specific needs of the ruling government.

Acquisition: The whole process of acquisition needs to be understood in stages.

Stage1:

This stage involves preliminary investigation covered under **Section 4, Section 5 and Section 5A**. In order to gain possession over a particular land, the government has to publish a notice, “that the land in question is needed or may be needed in the foreseeable future for a public purpose or for a company [Section 4(1)]. The notice does not mean that the land will definitely be acquired. It enables the government to survey the land and find whether the land will definitely be acquired. It enables the government to survey the land and find

⁷¹ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.17

whether the land is suitable for the purpose for which it is to be acquired. The notices must be published in three ways⁷²:

- The need for acquisition of land by the central government must be published in the Gazette⁷³ of India.
- The need for acquisition by the state government must be published in the Gazette of the state. The notices must come out in two daily newspapers. One of the newspapers must be a regional language daily and both the papers should be in circulation in the locality concerned from where the land is to be acquired.
- The Collector is also required to publish the notice in public at convenient places in the locality. Usually notices are fixed near the land which is acquired, so that the people have access to the information that such and such land may be acquired by the government.

The notices also serve as a warning to the legal owners of the land not to invest money or labor for improvement on the land. The owner will not be entitled for any such compensation for any improvements carried out after the date of publication of the notice. Permission from the Collector is necessary to advocate with land improvements.

Moreover, another important objective of publishing a notice is to inform other persons “not to acquire any interest on the mentioned land that is to be acquired by the government.”⁷⁴ In case the government decides not to acquire the land, people can be very well deprived of getting the best out of their land during the assessment period.

⁷² Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.18

⁷³ A gazette is an official journal brought out by the government and it is not easily available.

⁷⁴ Vaswani, Kalpana, Dhagamwar, Vasudha and Thukral, Enakshi Ganguly. Op-cit, p.20

The tribal lands, which are undoubtedly rich in terms of natural resources, are the most suitable sites for any and many government projects. However, the government has failed to comply with the provisions regarding acquisition of land and the reasons for it are many. Majority of the villagers cannot read. There are no tribal newspapers and very few can understand the language of the tribals. Usually the tribal lands are situated in the remote areas and so the Collector fails to publicize the notice in that particular area. There has arisen therefore a serious need to re-think the manner in which acquisition takes place, especially when inhabited by people whose level of literacy is low. Gram Sabha meeting becomes a necessary pre requisite in which at least 60% of the people whose land may be in the process of being acquired are present and a government official should be present to explain the terms of such meetings. Even those who do not own any land, especially the artisans, landless laborers, forests cultivators and so on should also be present as they are equally affected by the acquisition process.

The actual date of publication will be one which is affixed on land marks in the locality. Usually the period between the first and the last are often misused to purchase land from the poor and illiterate at very low rates by leading them to believe that very less will be paid in terms of compensation if acquisition takes place. On the basis of the final date of the notification the rate of compensation will be fixed and any improvements on land made henceforth will not form a part of the compensation package. After the Act of 1984 became a law, one more change has been introduced. Now, between the issue of the notice under Section 4 and the issue of declaration, a maximum of one year may elapse. In case the declaration is not issued within one year from the date of publication of the notice, then the notice u/s 4 will automatically lapse and the government has to issue a fresh notice if it intends to acquire a land.

The notice u/s 4 forms the first basis of the right of the people to have adequate information regarding the government desires to acquire the land. This is because at this stage the government is still considering as to whether the land should be acquired or not.⁷⁵ The notification is required to disclose the “public purpose” for which the land is to be acquired. But the Act did not lay down as to what constitutes such “public purpose.” That is why, even now, we do not have a single and unanimous definition of the seemingly promising term “public purpose.” It changes with the changing purposes of the government and has therefore remained irretrievably dubious.

Immediately after the notification has been published the person cannot dispose of his or her land. In simple words, there can be no change in the ownership of the land. Only under special permission from the Collector can a person be authorized to sell off his or her land. The survey of the land takes place only after proper notification has been published. “It is lawful for any officer⁷⁶ who has been properly authorized by the government to enter upon, survey and take level of any land in the locality specified in the notice without one’s permission.”⁷⁷ The LAA does not provide any time limit within which the officials are required to submit

⁷⁵ *Madhya Pradesh Housing Board vs. Mohd. Shafi and Others*, (192) 2 SCC 168. The Supreme Court mentioned that contents of Section 4(1) notice must enable a person to know the exact “locality” in which the land is sought to be acquired.

⁷⁶ Gujarat and Maharashtra have inserted section 3A and 3B in the Act that confers special powers to the official to carry on with the survey even before the notification has been issued u/s 4. Section 3A does not make any provision for publicizing the fact that a particular officer or officers have been authorized to enter upon the land in question. There is no way by which the people concerned can become more aware of it. And they will be forced to take to take the officer at his or her word. The provisions of 3A are therefore capable of being misused. In comparison to the provision of Section 3A, the procedure prescribed by Section 4 of the Act can be preferred as it alerts the people to the intention of the government.

⁷⁷ Vaswani, Kalpana, Dhagamwar, Vasudha and Thukral, *Enakshi Ganguly*. Op-cit, p.24

the report to the Collector. The 1984 Act does not give more than a year's time to submit and move on with the issue of declaration u/s 6.⁷⁸

Any damage caused on the land during survey ought to be paid by the Officer in charge. If the damage amount paid seems to be inadequate, the land owner can in writing refer the situation to the Collector, through the Officer himself. The decision of the Collector is final. However, no officer has the right to enter a person's home and do the survey if the person has not received seven days notice in writing in advance and can rightfully refuse to carry on any such initial survey.⁷⁹

People falling in the category of "person interested" have the right to object to the acquisition. Regardless of whether the acquisition is for a public or a private company, all objections and claims must be made to the Collector and not to the Company. The Collector is the acquiring authority.⁸⁰ The objections to the acquisition of land must be submitted in report alongwith the Collector's recommendations to the government. It is up to the government to decide as to whether the land is needed for acquisition and is suitable for the purposes contemplated. The decisions of the government are final and cannot be questioned in any court except on some restricted grounds.⁸¹

The LAA is basically silent on the grounds on which objections to acquisition of land can be raised. A look into the previous cases pointed out that the following objections can be raised by the people regarding the acquisition of their lands:

⁷⁸ Section 6: Declaration that land required for a public purpose.

⁷⁹ In case a person deliberately obstructs an authorized official while he is surveying the land that is to be acquired, then he or she may be arrested and tried by the Magistrate for such an offence.

⁸⁰ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.28

⁸¹ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.29

1. That the purpose for which the land is to be acquired is not a debatable constituent of the lofty precept of “public purpose”.
2. The land in question is not suitable for the purpose under contemplation by the government. Definite indication or particulars of the “public purpose” must be published on the notice to which the objection has been made. If no such specification is mentioned then a person has the right to bring this to the attention of the Collector and call him to furnish the required details. The lack of particulars acts as a handicap. So, it is necessary for those affected by the LAA, to make maximum use of the right to object and to be heard and prevent any ill-informed action on the part of the government. Once the decision has been finalized, it generally cannot be questioned even by the Court. The right to object and be heard is thus crucial. This right should be exercised within thirty days of publication of the notice. In case a person affected fails to do so, he or she will lose his or right to object to the acquisition of land. “The Act needs to be amended both in respect of the content of the notice u/s 4(1) and the period within which objections to such notices should be filed.”⁸²

However, if we go back into history we find that during the abolition of zamindari rights, the Zamindars challenged the state action on the grounds that the purpose for which their lands were acquired was not a public one. The extensive judicial literature removes the justiciability of public purpose and establishes the eminent theory doctrine of the state as discussed earlier. Second, the difficulties in exercising the right to information are manifold. The time period of one month is too short a period for the displacees to file a complaint. As most of the land losers falls in the category of illiterate to semi-literate, they are

⁸² Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.31

hardly aware of this right to information. People's organizations do come forward and file a complaint on their behalf and thwart further state acquisition. But, with the help of "police power" the state moves ahead with its acquisitions defying all resistances from people.

Stage II:

After the government has decided that a particular piece of land is needed for "public purpose" or for a company, then it must make a formal declaration to bring into effect the specified purpose of acquisition. "Such declarations must be signed by a secretary to the Government or any officer who has been authorized to do so."⁸³ The declaration must be published in

1. In the official gazette.
2. Two daily newspapers circulating in the locality
3. Posting in a public place where the land in question is located.

Except for the parameters, no state lays down the precise boundaries and survey number of the land, if any, while laying down the content of the declaration under Section 6(2).⁸⁴

The declaration must otherwise contain:⁸⁵

1. The district or other territorial division in which the land is situated.
2. The public purpose for which the land is needed.

⁸³ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.31

⁸⁴ Section 6(2): "The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected."

⁸⁵ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.32

3. if it is needed for a Company, details of the Company also should be stated, i.e. the approximate area of such land, and secondly, if a plan has been made of the land, the place where such plan can be inspected must also be given, as mentioned under Section 6(2).⁸⁶

The basic difference between the publication of notice u/s 4(1) and the declaration u/s 6(1) is that the government decides to acquire the mentioned land u/s 6(1). Notice issued under u/s 4 is preliminary in nature and only alerts the persons interested that the government might acquire the land of a 'person interested.' The initial investigation and survey of the land is usually completed and the exact area and location of the land needs to be specified in detail, unlike section 4(1).

The finality of the declaration is guaranteed under section 6(3). As per the law, the government's declaration that the specified land in question is needed for a "public purpose or for a company is considered to be final. The Courts cannot question whether such a need is genuine or whether the purpose is infact a public one. The only stage at which such question can be raised is the stage of filing objections after the publication of the Section 4 notice and the hearing before the Collector.

⁸⁶ The validity of a series of declarations assumes importance because a person is entitled to receive compensation on the market value of the land as per the publication of notice u/s 4(1) and not on the date of publication of the declaration or any such dates.

Stage III⁸⁷:

This stage mainly involves:

1. Giving notices to persons with vested interest in the land to be acquired u/s 9.⁸⁸
2. Enquiry into measurements, value and claims, leading to an award by the Collector.

Once the marking out of land and the preparing of the plans has been completed, it is the duty of the Collector to give notice u/s 9(1)⁸⁹, that the government intends to take possession of the land concerned and that it claims to compensate for all those with vested interest in the said land. It is the duty of the Collector to furnish the names of all persons interested in the acquired land. A person can also be asked to give in writing the names of all those persons who fall under the category of "person interested," such as a co-owner, a tenant, a leaser or mortgagee and such others. The legal owner of the land can also be compelled to state the rents and profits receivable from the land for the next three years.

The notices general and individual u/s 9 must contain:

1. The particulars of the land that is to be acquired.
2. "Person interested" or an agent should appear before the Collector to state the nature of the respective interest in the land, "the amount and

⁸⁷ Notice to person interested enquiry and award by the Collector, Sections 9-16.

⁸⁸ Section 9: notices to persons interested

⁸⁹ Section 9(1): "The Collector shall then cause public notice to be given at convenient places on or near the land to be taken; stating that the Government intends to take possession of the land, and that claims to compensation for all interest in such land may be made to him."

particulars their claims to compensation for such interests and their objections to the measurements taken u/s 8”.⁹⁰

3. The time and place at which one must be present should be specified. A period of fifteen days is normally given to all those who claim to have an interest on the land.⁹¹

Once the Collector’s award has been decided, the mentioned land becomes the property of the government. Thus it becomes necessary for a person to remain alert and respond to the notice by filling in a claim within the specified time limit. Failure to fill a definite claim means that one has to bind by the Collector’s award. Even if you have not been served with an individual notice, the validity of the proceedings of the acquisitions is tenure-bound and vindicates the government from any responsibility with reference to the expiry of the tenure. The government’s failure to serve individual notice to those involved on such grounds does not halt the acquisition process and a person stands to lose if he/she refuses to accept services of the notice and to act upon its contents.

Collector’s Award:

The Collector must make his or her award taking into consideration:

1. **The true area of the land that is to be acquired:** The particulars of the land given u/s 6 should be checked in all respects. This should be done in order to ensure that the land that is taken up by the government should correspond in all respects to the one mentioned in the declaration.

⁹⁰Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.37

(b) Section 8: Land to be marked out, measured and planned.

⁹¹ The notice however does not mention the time limit within which possession of land will take place leading to a great sense of insecurity and anxiety among those would be acquired.

2. **The nature of compensation to be awarded to the “person interested”:**
While administering and assessing the nature of compensation, the Collector is required by Section 15 to take into consideration the grounds that are set out in Section 23⁹² and ignore those found in Section 24.⁹³ The Collector enjoys a wider discretion in matters that are to be taken into consideration while deciding upon the award.
3. The Collector while deciding upon the amount of the award must necessarily **enquire into the various interests of the claimants** and determine who are entitled to compensation and in what proportion. The Collector decides upon the amount of compensation on the basis of the title deeds and relevant documents filed by the parties in order to ascertain the credibility of the claim.

Any dispute arising as a result of the distribution and allotment of the award and also to the persons paid is referred to the decision of the court u/s 30.⁹⁴ If the Collector finds himself or herself capable of fielding any questions that may be raised, then there remains no need to refer the matter to the Court and the Collector moves on with the decision.

Before making the final award, the Collector must obtain the prior approval of the Government. Special provisions were introduced in the 1984 Amendment Act in which the Government was entitled the power to specify the cases in which the Collector may announce the amount of the award without having to obtain the

⁹² Section 23: Matters to be considered while determining compensation.

⁹³ Section 24: Matters to be neglected while determining compensation.

⁹⁴ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.45

erstwhile necessary governmental approval.⁹⁵ The Collector's Award becomes final and conclusive once it has been received in the Collector's office after the governmental approval. The Collector on his or her behalf cannot make any such changes or alter the award once it has been filed. Only those who have interests on the land and are dissatisfied with the Collector's Award have been given the right to refer the case to the Court u/s 18.⁹⁶

Stage IV:

This stage basically involves taking possessions under Sections 16⁹⁷ and 31-34.⁹⁸ The Collector's award makes way for the possession of the mentioned land. The LAA requires the Collector to make payment of the compensation that is to be awarded, but does not lay down any specific time limit. In the legal sense of the term, it signifies the Collector's right to take possession of the land once the award has been made, even though the person interested may not have received any such payment.

⁹⁵ Under Section 11A, the Collector is required to make his/her award within two years from the date of publication of the declaration u/s 6(1) and the proceedings for acquisition will automatically lapse if no such award has been made.

⁹⁶ Section 18: Deals with reference to the Court

⁹⁷ Section 16: Power to take possession: - "when the Collector had made an Award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

⁹⁸ Section 31- Payment of compensation and deposit of same in Court.

Section 32- Investment of money deposited in respect of lands belonging to persons in competent to alienate.

Footnote 52 continued: Section 33- Investment of money deposited in other cases

Section 34- Payment of interest.

So, whatever may be the case, it is the displacees who have to suffer. On one hand, they are deprived of their lands and on the other hand the compensation which may (debatably) allow them to start afresh is withheld.

Compensation:

Determinations of compensation for displaced people are dealt under Section 23 and Section 24. “The valuation of the land is not an exact science,”⁹⁹ while deciding for compensation, an element of guess work is always involved.

Section 15¹⁰⁰ lays down that while determining issues related to compensation the Collector should follow the guidelines contained in Section 23 and Section 24. Section 23 deals with matters that are to be considered while determining compensation. Section 24 lays down the content which is not to be taken into consideration while deciding upon the amount of compensation.

The major criticism that finds itself addressing the process whereby the amount of the compensation is decided upon is that the market value of the land is fixed on the date of publication of notification u/s 4(1). Any subsequent increase on the price of the land is ignored. The locality and the nature of the land the major considerations while deciding upon the nature of compensation. The relevance of the actual potential use of the land is in assessing its marketing value is conveniently ignored.

⁹⁹ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.51

¹⁰⁰ Section 15: In determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24.

There are certain important considerations that need to be kept in mind when one is liable to get compensation from the acquired land.

1. The capacity and ability of a person to develop his or her land should not affect the amount of compensation. Everything depends on the potential of the land and not on one's own ability to develop the land.¹⁰¹
2. As far as standing crops and trees on the acquired land is concerned, the value of those crops and trees should be included in the marked value of the land, as in Section 23(1). If a person derives income from those standing crops and trees, then the compensation amount will be determined by taking into consideration the higher of the two amounts. Firstly, *the market value of the land plus value of the trees treating them as timbers. And secondly, net income from the trees multiplies by fifteen years of capitalization.*¹⁰² The same applies for a building on the required land.

A person under the law is also entitled to receive compensation for any kind of damages that has been done to the land as a result of the acquisition. Often damages inflicted upon the land results in decreased value of the land which has not been acquired. Hence the owner and occupier of the acquired land are entitled to compensation for the decreased value of the land.¹⁰³ A person is also liable to be compensated for any other damages that may not have been mentioned above,

¹⁰¹ Tek Chand and Others vs. Union of India and Others, (1990) 4 SCC 495.

¹⁰² Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.54

¹⁰³ Section 23(1) thirdly: "The damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by the reason of severing such land from his other land."

done to the property as a result of the acquisition proceedings.¹⁰⁴ Only “person interested,” can claim compensation under this clause.

If a person is compelled to change his or her residences or business location as a result of the acquisition proceedings then the Collector or respective Court is required to take into consideration the expenses that a person has to incur as a result of such change of location.¹⁰⁵ A person is also entitled to compensation for any loss bonafide suffered by a person as a result of the decrease in the profits from the land between the time when the declaration u/s 6 is published and when the Collector takes possession.¹⁰⁶

The prevailing dispute of the payment of compensation as per the date of publication of notice u/s 4(1) was taken into consideration in 1984, when the government realized that compensation on this basis was unrealistic and unjust and consequently, the 1984 Amendment Act¹⁰⁷ was introduced. The 1984 Act made it mandatory that in addition to the market value of the land, a person is also entitled to receive interest at the rate of 12%p.a of the market value awarded.¹⁰⁸ Moreover, if proceedings for acquiring one’s land commenced before the coming into force of the Amendment Act of 1984 but till 30-4-1982, no award has been

¹⁰⁴ Section 23(1) fourthly: “ The damage(if any) sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, if any other matter, or his earnings.”

¹⁰⁵ Section 23(1) fifthly: “ If in the consequence of the acquisition of land by the Collector, the person interested in compelled to change is residence or place of business, the reasonable expenses(if any) incidental to such change.”

¹⁰⁶ Section 23(1) sixthly: “ The damage(if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector’s taking possession of the land.”

¹⁰⁷ From now on it will be termed as 1984 Act

¹⁰⁸ If the acquisition proceedings are withheld on account of any stay or injunction of a court, a person is not entitled to get any interest on the market value.

made, then a person will be entitled to receive interest in terms of Section 23(1-A) Amendment Act of 1984 Section 30(1).¹⁰⁹

A person is also entitled to receive a sum which is equivalent to 30% of the market value awarded. This is generally known as solatium which is awarded in all cases of compulsory acquisition. The increased solatium of 30% is applicable to all awards made by the Collector or Reference Court after 30-04-1982.¹¹⁰ Lands on which schools, churches, temples and hospitals etc. are built; the amount of compensation on such lands is decided on the basis of reinstatement value. Reinstatement value means that the costs of such land are determined in accordance with the cost of acquiring an alternate site and constructing premises that are equally convenient. This ensures that the owner does not lose out completely when the acquisition takes place.¹¹¹

Matters that need to be excluded while determining compensation under Section 24: While moving on with the acquisition process, certain matters need to be excluded and thus made inconsequential where the determination of the amount of compensation is concerned:

1. Degree of urgency: when the government decides to acquire land from a person, the degree of urgency is not taken into consideration while

¹⁰⁹ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.58.

¹¹⁰ State of Punjab vs. Avatar Singh and Others (1995) 1 SCC 383. Both before and after the Amendment Act 1984 the solatium is awarded only with reference to the market value of one's land and not on the other sums which one may have been awarded under the heads of Section 23(1)

¹¹¹ Giving statutory recognition to the principle of reinstatement was laid down in the Report of Land Acquisition review Committee (1961) on the Land Acquisition Act, 1894. But till date no such actions has been taken on the part of the government while moving on with its acquisition process.

assessing the value of the land. A person is entitled to a fair market value under Section 24.

2. Disinclination to part with the land: The value of compensation that is to be fixed will not be affected with one's disinterest to part with the land. The wish of the land holder is not of much relevance when the government has decided to acquire the land for a "public purpose."
3. Damages without injury: The Act provides that if as a consequence of the acquisition proceedings, a person suffers damage, then he or she will not be entitled to be compensated for such damage unless the damage is of such a nature that if it had been caused by a private person, he or she would be liable in law, to compensate these losses.¹¹²
4. Prospective damages: Any damage that is likely to be caused to an owner's land or in consequence of the use to which it will be put when acquired, will not be liable for compensation under Section 24.
5. Prospective value of land due to acquisition: in case there is a prospective increase in the value of the land in a manner in which the government uses it, which one could not have done under the law, then one cannot claim for compensation for the increased value of the land after acquisition.

Following these, the Collector takes a formal offer of payment of compensation to the "persons interested" as per the terms of the Award. If a person is not satisfied with the compensation amount that is recognized and admitted by the Collector, then the compensation award must be received and at the same time the

¹¹² Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral . Op-cit, pp. 60-61.
(b) Section 24, thirdly: "Any damage sustained by him, if caused by a private person, would not render such person liable to a suit."

dissatisfied must contend that such a payment is not adequate.¹¹³ This process is also known as “receiving compensation under protest.”¹¹⁴

A person can always “seek a reference” in case he or she has failed to file a protest against the amount of compensation that has been received. If the payment is made by cheque then a person interested cannot use the money immediately, if a reference has been made. Very little can be done, if the money has been encashed without protesting. An application u/s 18 cannot be made. A person, can however, get some relief by the predetermination of compensation under Section 28A.¹¹⁵

A person who has a legal authority to transfer land on behalf of the owner, is entitled to receive compensation from the Collector. Unauthorized individuals are not entitled for any kind of compensation as they are incompetent to alienate the property. The Collector can also rightfully withhold the compensation amount in case there is a dispute as to who is legally entitled to receive compensation award. Concerned persons in such cases can make an application to the Collector u/s 18, so that the person entitled for compensation can be determined.

Likewise if compensation has been awarded to the wrong person and not to the person entitled, then a reference can be made u/s 18. The Act provides that where any person received compensation in part or fully from the Collector and is later found by the Court that such a person is not entitled to the whole or a part of the

¹¹³ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.64

¹¹⁴ An application to the Collector regarding the sufficiency of the compensation can be made under Section 18 and will be determined by the Court. However, the Act does not specify the manner in which the protest against the receipt of compensation has to be made. A simple mention of the term “receiving compensation under protest,” or “received under protest,” is considered to be sufficient.

¹¹⁵ Section 28A: “Collector may be directed to pay interest on excess compensation.”

amount received by him or her, then such a person will be liable to pay the amount to the person who is found to be lawfully entitled to it.¹¹⁶

A person is entitled to receive interest on the compensation amount if the payment is delayed. Before the 1984 Amendment Act, the rate of interest was 6%. Now, it is 9% p.a. for the period commencing from the taking of possession up to the time when it is paid. After the expiry of that term, a person is entitled to receive an interest rate of 15% p.a. for the period commencing from the expiry of the said one year, until it is paid.¹¹⁷ Reference to District Court can only be made when a “person interested” is not satisfied with the Collector’s Award.

However, it must be ensured that the application is made by a “person interested,” and the person “should not have accepted the award” of the Collector. This application, in writing, should be given to the Collector and then it is referred to the Court. “Person interested” cannot approach the Court directly. The application¹¹⁸ should contain first and foremost a demand for reference,¹¹⁹ and the grounds on which the objection is raised. It can be either on the amount of compensation, persons who are entitled for compensation, land measurement, “apportionment of the compensation among the persons interested.”¹²⁰

The Collector cannot refuse to make a reference if a “person interested,” has filed an application within the specified time period. If this happens, then the

¹¹⁶ Third proviso to Section 32(2)

¹¹⁷ Section 34, of LLA, 1894. The payment of interest u/s 34 is mandatory and is neither in the discretion of the Collector or the Court.

¹¹⁸ In case the person interested dies, then legal representatives of the person concerned can make an application to the Court. However, such an application must be made within 90 days of the death of the person concerned.

¹¹⁹ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.73.

¹²⁰ Section 18 of LAA, 1894.

concerned person does have the right to approach the High Court.¹²¹ Once the application is submitted, the Court enquires into the objections that are raised and not beyond that. The award of the Court¹²² must set out the amount of compensation awarded under each of the sub clauses of Section 23(1). The reasons and grounds on which each of these amounts was awarded have also to be stated, as mentioned in Section 26(1).¹²³ The Court in no circumstances can award a sum less than that awarded by the Collector.¹²⁴ The Court has the power to award a sum in excess of that awarded by the Collector but not a lesser sum.¹²⁵

2.4 Lacunae in the Land Acquisition Act, 1894: Need for Improvements

Moving further, it has thus become clear that the Act, which was designed during the colonial period, is meant essentially to promote the interests of the state in the name of development, rather than protecting the legitimate rights of the people of India as guaranteed by the Indian Constitution. The Act is more than a hundred years old and thus needs to be improved to meet the challenges of present displacement and rehabilitation problems. There is enough room for improving the overall implementation process of the Act. Any suggestions for improvement in the Act should include expeditious disposal of cases under the Land Acquisition Act, 1894¹²⁶ and rigorous protection of the displacees' interests.

¹²¹ In *Prem Raj vs. Union of India* (1992) 3 SCC 40, The Supreme Court made it mandatory that the application must be forwarded to the Collector within three months of its submission. In extreme situations, it should not be more than six months.

¹²² The award of the court is only required to specify the amounts awarded under each of the sub clauses of Section 23(1) and grounds for awarding such amounts. By virtue of Section 26(2) of the LAA, 1894, the award of the Court is deemed to be a decree.

¹²³ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. Op-cit, p.78.

¹²⁴ Ibid, p.80

¹²⁵ Section 25, as amended by the 1984 Amendment Act.

¹²⁶ Mathur, Hari Mohan. Op-cit, p.137.

The need of the hour is to challenge the doctrine of “eminent domain.”¹²⁷ Though the theory is applied even today, it is no longer exercised in a dictatorial manner.¹²⁸ The Land Acquisition Act is a statutory statement of the state’s eminent domain, which vests the state with ultimate control over all lands within its territory.¹²⁹ The doctrine of eminent domain struck its roots in independent India, when the so-called just state was pitted against those who controlled and owned large tracts of the Indian land mass, thus making equitable distribution of property an impossibility. The efficacy of the Act was challenged when it came to define what constitutes compensation. The nature of compensation, as put by critics, was itself akin to confiscation, since it was based on the notional market value of the land and was thus unconstitutional. This is just one of the grounds from which the law was being attacked. The doctrine of eminent domain laid the second foundation to the various challenges against the law. It is this doctrine of eminent domain that has dictated the understanding of state power over its territorial lands, the Act denies the person, from whom the land is acquired, the right to exercise his choice. The notion of eminent domain was reiterated as being the power of the sovereign (State) to take property for public use without owner’s consent. Going by the state’s authority to have control over all land within its territory, the notion of power is basically confined to (1) the power to take, (2) without the owner’s consent, (3) for the public use.¹³⁰ What more, it is this public interest that has given the state a justification for its stand to claim the common man’s property. The government has also been bestowed with special powers for

¹²⁷ Refer to Chapter 1.

¹²⁸ Ibid.

¹²⁹ Ramanathan, Usha. *Displacement and the Law*. 31 *Economic and Political Weekly*. 1996 (Source: www.ielrc.org)

¹³⁰ For further reference see Usha Ramanathan’s article on Eminent Domain, Protest and the Discourse on Rehabilitation in Cernea M.M, Mohan.M. (eds.) *The Compensation Dilemma: Can Compensation Prevent Impoverishment?* Oxford University Press: New Delhi.

emergency/urgency¹³¹ period and it can cut short the entire process of publishing notices and accepting objections. The current law also does not allow the farmers to sell their land directly to the industries. The fragmented lands also cannot be sold individually and hence calls for significant state intervention whenever land needs to be acquired for non-agricultural purposes. The theory is thus conditioned and accepted under three basic legal doctrines, namely, “regard for the public welfare is the highest law,” “every subject is entitled to be heard before he/she is deprived of his/her property,” and lastly “public necessity is greater than private necessity.”

The government is empowered to acquire land for a public purpose. But till date, the term “public purpose” has not been exhaustively defined in the Act. Moreover, the Act has made acquisitions of land easy for the ruling government at any given time and therefore, it has been the tendency of the government to acquire too much land.¹³² There are provisions that deal with the acquisition of land for private companies. But time and again this provision has been misused and critics of this Act have suggested that this provision be deleted altogether.¹³³ Moreover, a “person interested” can effectively object to the proposed acquisition Act during the notification stage, if and only if he/she has been furnished with adequate information about the purposes for which the land is to be acquired. But adequate information is never furnished as a result of which the “person(s) interested” fail to exercise the right to object and lose the only opportunity to challenge the entire acquisition process proposed by the government.¹³⁴ The time period to raise such objections is also very less for a person to gather all the

¹³¹ The term urgency has not been defined in the Act.

¹³² Jain, Sobhita, Bala, Madhu. Op-cit, p.37

¹³³ Adhikary, Twisha (2005) *Resettlement and Rehabilitation Strategy for Displacement Caused due to Mining*. National Seminar on Policies, Statutes and Legislations in Mines, POSTALE, p.6

¹³⁴ Ibid.

necessary information about the project in question. Above all, most of the lands which are acquired or are meant to be acquired are tribal lands. Hailing from backward sections of the society and illiterates, the tribals can hardly fight for their rights as they do not understand the complexity of the law and are forced to give away their lands without much protest.

When it comes to the compensation amount, it is seen that the rate of compensation is always inadequate and takes into consideration only the notional market value. The compensation amount is in the form of cash which is generally spent on consumption items, leaving little or nothing for future sustenance and livelihood activities.¹³⁵ The Act only compensates the assets of the “persons interested” and not their loss of livelihood. Generally the displacees have very little assets that can be compensated. The little compensation amount which they get leads to further impoverishment. Compensation amounts are paid only to those who fall in the category of persons interested or the compensation payable for such land.¹³⁶ Artisans and landless laborers and so on are not regarded as persons interested and hence no compensation is paid to them even though they depend upon the land acquired for their livelihood.

The Act only recognizes displacement of individuals and not communities. Therefore, community values and assets and character are not protected or replaced. Moreover, it provides compensation for the *patta* land alone and not for the common property resources (CPR's) or to those people who have been rendering services to the village as a community. That is why critics have argued that replacement value should be taken into consideration while determining the compensation amount. Replacement value includes the cost of the land, grazing,

¹³⁵ Jain, Sobhita, Bala, Madhu. Op-cit, p.37

¹³⁶ Adhikary, Twisha. Op-cit, p.6

the livelihood of those who are dependent on the land for their survival and employment, the cost of the trees and other crops grown on the land multiplied by twenty years.

The Act relies heavily on land records which are often faulty and makes the acquisition process easy for the government in power. It has always been the tendency of the government to overestimate the benefits of acquisition for “public purposes” and under accesses the costs.

Lastly, the Act does not ensure that the rehabilitation and resettlement of the displacees follow in tune with the acquisition process. If it is in the mindset of the requiring agencies and the leaders of our country that ‘some people must sacrifice in the larger interest of development,’ then it by default is their duty to integrate these people in the development process and rehabilitate them and also ensure a proper livelihood for them.

2.5 Strengthening the participatory process

Today, when there is a problem of mass scale displacement or of rehabilitation and resettlement fallacies, the acquisition proposal must be made by the government after initial visits on the land which needs to be acquired and in consultation with the people and revenue officials. Rather than giving individual hearings, the Collector can, after issuing the notification u/s 4, pay regular visits to the concerned village areas and give an opportunity of public hearing in the presence of the representative of the people, panchayats, and non-governmental

organizations and so on.¹³⁷ It is also necessary that the Collector makes necessary field visits to probe into the matters of objections and make necessary changes that should cater to the interest of the people as well as the requiring body. The ultimate authority would then rest in the hands of the people as decisions would then be taken by visualizing the ground level realities.

The right to be heard should be made more meaningful. This basically requires consultation with the elected Gram Panchayats before moving on with the acquisition process. Secondly, acquisition of homestead lands, agricultural lands and ceiling surplus lands should be barred, as it has rendered (and still does) great disadvantages to the local communities both economically and environmentally. The provision of public hearing thus becomes essential so that the interests of the common man do not get sidelined. The Collector should be bestowed therefore with powers to modify the specific area of lands to protect reasonable interests of the common people, while meeting the needs of the requiring authority.¹³⁸

It is also important that the Collector take into account “the people’s assessment of the value of their own property especially when furnished with valid documents.” One sided assessments by the Collector has always underestimated the value of the land and also the compensation amount that is decided on the basis of the formulae prescribed by the law. Moreover, the most deprived and backward sections of the society should submit an application to the Collector, either in person or through their representative, for their rehabilitation and resettlement provisions. These groups are generally incapable of organizing pressure for proper assistance. This will ensure that the process of development

¹³⁷ Mathur, Hari Mohan. Op-cit, p.146

¹³⁸ Mathur, Hari Mohan. Op-cit, p.147

and acquisition of land does not lead to the destruction of the affected people and families.

Land value assessment should be based on multiple formulas prevailing in the field and the award determined to the maximum available out of the alternative formulae.¹³⁹ The assessment of immovable properties should be carried out by the Public Works Department (PWD) or other valuation experts. The assessments of trees, crops and other produce from the land should be assessed respectively by the Ministries of Agriculture, Fisheries, Animal husbandry and so on. Moreover, the other factors that are to be considered in determining the compensation amount should be prescribed in the Act for direction to the Collector which should be followed in the Courts as well. Any damages done to a person's land during survey must be compensated. The payment for such damages should be made much before the compensation is awarded for the land that is actually acquired. The rate of solatium should be increased substantially, as an addition to the value of the property. As a result of all these, the pain associated with compulsory dispossession can be minimized.

Moreover, alongwith introducing new policies on Rehabilitation and Resettlement¹⁴⁰, it was also proposed that the Act should be amended thoroughly.¹⁴¹ In all, it was argued that the whole process of land acquisition transaction must necessarily be made more transparent. The entire procedure of land acquisition must be made available to all concerned persons in the form of an information booklet, thus assuring the right to information of 'person interested.' Finally, the need of the hour is to plan and execute the R&R package, with the

¹³⁹ Mathur, Hari Mohan. Op-cit, p.147

¹⁴⁰ Henceforth R&R

¹⁴¹ Jain, Sobhita, Bala, Madhu. Op-cit, p.38

knowledge and participation of the people who are affected by the acquisition process. Beneficiaries should be given the right to adjust the cost against the final award of compensation.

2.6 Conclusion

Any understanding of the Land Acquisition Act, 1894 should necessarily involve knowledge of who the stakeholders in this whole process and what their respective interests are. The first set of stakeholders is the land losers, and consists also of the legal owners of the land. Their interest will always be to prevent the land from being acquired. The second set of stakeholders comprises the requiring bodies whose interests consist of the desire to acquire the required land in as little time as possible and with the minimum of costs incurred. And the third set of stakeholders comprises those in the government who are interested. This set is interested in maintaining law and order and the avoidance of any problem that may arise as a result of disturbance in the status quo.

All the stakeholders thus have conflicting interests. There are as such no guidelines concerning the pre-acquisition stage as a result of which it cannot restrict manipulations before the first notification. The Collector-centric approach allows both the land losers and the requiring bodies the power to exert pressure on the government, thus challenging the status quo. The need of contemporary times is a broad based decision making body and that is interested in and has the capability to make non-linear and welfare maximizing decisions.

Over the years, studies on the Act have pointed out three broad areas of contention between the people, the requiring bodies and the government. First, the

problem of evaluation of the purpose and the necessity of acquisition. Second, the problem arising from the enumeration of the population that stands to be disadvantaged because of the proposed acquisition. Third, the problem leading from the identification of the “persons’ interested” and the process of the computation of the value of the compensation.

The acquisition process has been divided into three mutually exclusive but logically integrated stages. First, is the pre-acquisition or preparatory stage. Second, is the acquisition stage and third, the post-acquisition stage or the ameliorative stage. The first stage, as mentioned, deals with three broad areas of conflict between the people, requiring bodies and the government. The second stage deals with the legal process of acquisition and transfer of land. The socio-economic problems and psychological trauma of forced displacement and loss of livelihood are dealt with in the ameliorative stage. These will be explained in detail in the following chapters.

In all, there is a need for active transfer of work to specialists since activities like compensation computation, impact assessments and rehabilitation and resettlement policies are tasks that cannot adequately be handled by generalists from the revenue department. Secondly, as mentioned earlier, there is a need for a broad based decision making process. Within the existing paradigm of the legal requirements, the effective acquisition work is conducted by the revenue department officials armed with delegated powers from the District Collector. There is, thus, a need for a division of the entire process into distinctive stages and participation of experts can be expedited and adequately defined.

Democratization of the acquisition process involving the people who are to be affected, and then resorting to the help of trained specialists to control the social,

economic, psychological and ecological impacts of the acquisition, can be an answer to the lacunae that exists in the Act. The reason why policy makers are thinking on the grounds of rehabilitating the displacees is because they are “no longer in a mood to suffer displacement along with its concomitant attributes like occupational degeneration, social disorientation, pauperization, loss in dignity and often getting cheated of the compensation amount which serves to make the experience a trauma.”¹⁴² Most of these mega projects are funded by the World Bank or other international funding agencies. The threat of withdrawal from these funding agencies in the wake of rising protests from the displaced people has pushed the state to include rehabilitation as part of the development agenda. The crackdown of people’s protest and resistance has been one of the essential components of the state policy¹⁴³ to push forward with its developmental plans. This seriously undermines the democratic nature of the Indian state. The time that has presented itself demands that we look for an alternative paradigm that will see into the process and ensure that land is available for “genuine public purposes,” and also that in the process the land losers are not deprived, impoverished and rendered destitute of their means of basic living.

¹⁴² Para 2.1 and 2.2 of the 1994 Draft National Rehabilitation Policy.

¹⁴³ Ramanathan, Usha. Op-cit. 2006.

CHAPTER 3

Development through Displacement A Study of Singur, West Bengal

CHAPTER 3

Development through Displacement

A Study of Singur, West Bengal

3.1 Introduction

The “irresponsible design”¹⁴⁴ of the Indian government to carry on with development projects has resulted in displacement of large numbers of people. Over the years, issues and concerns are raised for minimizing the effects of displacement and making rehabilitation a part of the overall development process. The colonial law ensures smooth transfer of lands of people to the government. But there is no provision in law to ensure an equally smooth rehabilitation of people who give away their lands to the government. The government has time and again failed to guarantee proper rehabilitation and resettlement package for the poor. The drive for industrial development, construction of mega projects over fertile agricultural land and displacement of large number of people and so on, raises serious ethical questions on the credibility of the government. We are living in a democracy and “democracy requires a conscience.” But these unethical policies of the government with regards to developmental projects will soon transform democracy into “democracy.”

¹⁴⁴ Jain, Sobhita; Bala, Madhu (2006). *The Economics and Politics of Resettlement in India*. Pearson Longman. . p101

The nature of displacement is varied. Before I move on to analyze the nature of displacement that takes place as a result of mega developmental projects, it becomes necessary to discuss various forms of displacement arising as a result of man-made or natural disasters.¹⁴⁵

1. **Voluntary Migrants**: People who migrate away from their home voluntarily in search of employment or better prospects are known as voluntary migrants. Usually in such cases the issue of resettlement and rehabilitation does not arise, as migration is voluntary.
2. **Refugees**: People who are forced to move out of their habitat because of wars and civil unrest are known as refugees. Usually in war time, the immigration and emigration of refugees from one country to the other is high. None of the concerned states takes up the responsibility for refugees as a result of which resettlement and rehabilitation of refugees does not occur.
3. **Disaster Refugees**: Natural or human made disasters which force people to leave their homes or lands produce disaster refugees. The Union Carbide disaster in Bhopal, the earthquake in Gujarat and the Tsunami disaster forced many people to leave their households. Assistance is in the form of immediate relief and compensation but there is no provision for permanent rehabilitation of disaster refugees.
4. **Process Displaced Persons**: Due to changes in the economy of an area many people lose out on their livelihood. Deforestation has resulted in loss of livelihood for millions of the tribal population. The government hardly

¹⁴⁵ Adhikary, Twisha (2005). *Resettlement and Rehabilitation Strategy for Displacement Caused due to Mining*. National Seminar on Policies, Statutes and Legislations in Mines, POSTALE. The following categorization has been taken from this paper. For further reference please refer to page 6 of this article.

takes note of such displacees and neither are they provided any compensation or resettlement.

5. **Displaced persons (DP's/ PAP's)**: "Persons deprived of their livelihood after their lands and other assets are acquired for development projects are known as displaced persons and PAP's (project affected persons)."¹⁴⁶ Displaced persons are those who are only displaced and PAP's are people whose livelihood is alienated from them though they may remain where they are. It is for these types of displaced persons for whom usually Resettlement and Rehabilitation is hereafter worked. If R&R can be properly and successfully planned for those people, then such a plan can also be used for rehabilitating other categories of displaced people.¹⁴⁷ The research will only confine itself to people who are displaced by mega developmental projects. It is important here to note that unlike other forms of displacement, displacement as a result of mega projects are carried out by agents of development, i.e. the state. The state generally takes no responsibility of rehabilitating people who have voluntarily migrated either for better opportunities or were forced to migrate as a result of process change and war time crises. Only disaster refugees find some kind of assistance in the form of cash compensation but no effort is taken towards rehabilitating them. Project induced displacement calls for resettlement and rehabilitation of refugees as the state forcibly evicts them from their current physical location. Till late 1970's and early 1980's, cash compensation was regarded as the best remedy but pressure from World Bank to meet certain human rights standards forced the agents of

¹⁴⁶ Adhikary, Twisha. Op-cit. 2005. People who have not been physically dislocated as a result of acquisition fall into this category. The livelihood and impoverishment risks that they undergo as a result of acquisition qualify them for rehabilitation.

¹⁴⁷ Adhikary, Twisha. Op-cit. p.3

development to come up with a flurry of draft rehabilitation policies until a weaker version of it was announced in February 2004.

It was very necessary for us to categorize the nature and form of displacement. When we talk about DID we need to expand our horizon beyond that of a dam or a project? Firstly¹⁴⁸, development induced displacement (DID) is not only about dams and projects. The existing image of DID in policy circles includes large infrastructural undertakings, airports and roads. Secondly, a shift from project-to-policy induced displacement makes it necessary to “include displacement caused by private as well as public policy.”¹⁴⁹ The liberalization of the Indian economy has over the years embraced policies that rely heavily on the benefits accrued from private investments. And thirdly, displacement of people and sometimes even of the whole community need not be direct always. We need to draw a line between direct and indirect forms of displacement. In most of the cases, the worst form of displacement is carried out by the state to evict people. Ironically, the agents of development are the ones who are responsible for the forceful displacement of outsees. In this context, we really need to understand as to what is development in the actual sense of the term. Since displacement has become a foreseeable consequence of development, we need to analyze the term in brief before we move on to analyze displacement as perceived by law and displacement problems outside the parameters of law. Development is not only about growth. Development means changes- changes in the social, economic and political spheres that are beneficial to most of the people in the society rather than a few.

¹⁴⁸ A detailed analysis on Development induced Development is provided by Sobhita Jain and Madhu Bala in their book, “*The Economics and Politics of Resettlement in India.*” Please refer to Chapter 4 of this book as most of the articulation on development versus displacement is based on the arguments provided by contributing authors.

¹⁴⁹ Jain, Sobhita and Madhu Bala. Op-cit. p.100

Any mega project constructed in the name of development will result in displacement and impoverishment of people, people who do not actually participate or benefit in this development process.

At the macro-economical level, there is development as the land occupied is infinitesimal compared to the total agricultural land, like for instance the one acquired in Singur in West Bengal. The acquisition of the land in Singur by the Tata's will not affect the overall agricultural production in any plausible way. The problem lies at the microeconomic level. People are displaced, they lose their livelihood and land and there have been instances of human rights violations whenever there is government takeover of lands either for public or private companies. The land that is acquired results in both direct and indirect displacement. The coercive power of the state is used to directly evacuate the people from the land that is to be acquired and Singur is a glaring example of it. There are landless agricultural laborers, local traders and also sharecroppers who derive economic benefits from the agricultural land indirectly. Not only they lose out on their source of livelihood but cannot expect any kind of solid compensation from the government. Protest from displacees, non-governmental organizations, social activists and opposition parties and so on are mainly focused on rights of the displaced people, their loss of livelihood and the way they are to be compensated by the government.

3.2 Displacement: An Inevitable Consequence of Development

Most mega projects have “irresponsible designs,”¹⁵⁰ that focus more on profit making motives rather than minimizing the effects of overall displacement problems. Till date, we have no strong national policies that focus effectively on the rehabilitation and resettlement problems. Developmental projects should find successful methods to avoid any and all kinds of displacement. Development cannot be carried out by impeding the developmental opportunities of the displaced people and sometimes even of the entire community. In his book, Michael Cernea¹⁵¹ argued that, “rather than impoverishing outsees in order to meet development needs of others, the benefits of development must be available more evenly throughout both communities.”¹⁵² That is why the resettlement and rehabilitation of displaced people is considered to be so important in the construction of mega projects. Mega projects, constructed in the name of development, cannot create job opportunities for all displaced people. Cash compensation is restricted to only those people who have legal rights over the land. The Land Acquisition Act of 1894 applies to only those households who have legal rights over the land. For people who have “disputed legal rights”¹⁵³ over the land or no legal rights at all cannot receive any kind of compensation as mentioned under the law. In order to simplify things, Sobhita Jain and Madhu Bala¹⁵⁴ categorized six types of households who are affected by mega projects and have disputed or no legal rights over the land that is being acquired by the government. The households are classified as:

¹⁵⁰ Jain, Sobhita and Madhu Bala. Op-cit. p 101

¹⁵¹ Cernea, Michael M. 1990. *Poverty Risks from Population Displacement in Water Resources Development: Policy and Operational Issues*. DDP 335, Harvard University: Cambridge.

¹⁵² Ibid.

¹⁵³ Jain, Sobhita and Madhu Bala. Op-cit. p 82

¹⁵⁴ Ibid

- 1) *households possessing land with legal rights*
- 2) *households possessing land with disputed legal rights*
- 3) *households possessing land without legal rights*
- 4) *tenant households*
- 5) *landless households*
- 6) *households with land not submerged*¹⁵⁵

The LAA, 1894 only covers first category of households. The Act is more or less silent on households who fall in the other categories. Agricultural laborers, artisans, local traders and sharecroppers and so on cannot perceive any such advantage. It becomes extremely difficult for agricultural laborers and artisans to sustain themselves as they lose their occupational base and are forced to seek work somewhere else that is extremely difficult to come by. Vulnerable social groups especially children, women and economically disadvantaged people suffer more than others as a result of displacement. The problems faced by them are varied and therefore cannot be roofed under one solution. Agricultural laborers, artisans, vulnerable groups and socially and economically deprived people and so on have different needs and problems. They require special attention which our representatives forget and also a strategic plan that will minimize their relative insolvency and also “lessen their dependency, subordination and vulnerability of exploitation.”¹⁵⁶ Rather than eliminating them from the whole development process, it is very necessary that the reigning government should give them an opportunity to voice their opinions. Most of the time the consent for land

¹⁵⁵ Note: This categorization is done by Sobhita Jain and Madhu Bala. The categorization deals with only first four classifications of households. For further details please refer Jain, Sobhita and Bala, Madhu (2006). *The Economics and Politics of Resettlement in India*. Pearson Longman. pp 82-85.

¹⁵⁶Jain, Sobhita and Madhu Bala (2006). Op-cit. pg. 101.

acquisitions is based on coercion. An ideal situation will be one where voluntary acquisitions are based on the consent of the DP's. Displacement will inevitably cease to be a major economic or human issue-an ideal situation that can never be real. If acquisitions are voluntary then human rights violations, environmental concerns and others community related concerns can be dealt with efficiently without weakening the ties of the people to their culture, community and above all to their land. All these are ideal setups to minimize displacement problems. But in reality, mega projects like car factories, housing and infrastructure, all require adjacent lands that are not readily available if some villagers refuse to sell it. That is why the government exercises its exclusive domain- the land acquisition laws that outrightly violated the property rights of the people in the name of "public purpose." Acquisitions have never been ethical because displacement has never been minimized in an ethical way. Developmental efforts that involve displacement will be continuously subjected to ethical criticism unless we have a responsible design for developmental projects. If ethical concerns are raised then the need of the hour is to follow the *pari passu* principle whereby the project can be allowed to proceed if and only if rehabilitation of the one being displaced is completed.

3.3 Industrial Development in West Bengal¹⁵⁷

Before we move on to analyze the whole development versus displacement problem in West Bengal, we should understand the current industrial output of the state. We condition ourselves to think that development means industrialization. It

¹⁵⁷ The analysis is based on a paper series written by Mohan Guruswamy and others who have worked extensively on the economic growth of West Bengal during the CPM era. I have basically taken inputs from Mohan Guruswamy's paper on "*Industrial Decline in West Bengal*," and "*Economic Growth and Development in West Bengal: Reality versus Perception*." Few data has been collected from these two paper series.

cannot be denied that industrial development is indeed one of the major factors for the economic transformation of a particular state or a nation at large, but economic growth is not determined by industrialization alone. India is a glaring example of the fact that industrial development does not determine the economic growth of a country. India's GDP rate¹⁵⁸ did not change significantly even though there was an economic boom over the last few years. West Bengal which was once at the level of "industrial primacy"¹⁵⁹ is now becoming a fading memory. The huge industrial investments that are taking place in West Bengal, and also in other states especially Gujarat, Maharashtra and Tamil Nadu are raising serious concerns on the credibility of the CPM led government in West Bengal and what it has done to the overall development of the state. Eminent personalities like V.S. Naipaul even went to the extent of pronouncing that "Bengal was the economic and intellectual leader till it discovered Marxism."¹⁶⁰ But when we look at facts, the story is something different than what Naipaul observed. It is true that West Bengal follows Marxism but whether it committed suicide like "poor Russia in 1917" by following the tenets of Marxism are yet to be proved. It must be remembered that we need to move beyond "poetic licenses" to understand the reality and the reality lies in facts. In 1993-94 West Bengal was only next to Karnataka and had a growth rate of about 7.2%. The per capital income was also far better than that of other states. When compared to the nationwide per capita growth rate of 4.3%, West Bengal fared much better and attained an average per capital growth rate of 5.5%.¹⁶¹

¹⁵⁸ Guruswamy, Mohan (2005). *Industrial Decline in West Bengal*.
<http://www.cpasind.com/articles/mg-05-03-17-industrial-decline-west-bengal.html>. 17-03-2005

¹⁵⁹ Ibid

¹⁶⁰ Ibid

¹⁶¹ See data. (1980-2003)

Since 1981, the population¹⁶² in West Bengal grew at an alarming rate of 2.34%. The irrepressible and unabated migration from Bangladesh contributed significantly to the staggering rise of population in the region. There can be many reasons for the incredible rise of population in the state. But, it cannot be denied that if the migration problem was been tackled efficiently the per capita income of the state would have been much higher. Every year there are innumerable immigrants coming from neighboring states of Bihar and Orissa to West Bengal in search of better economic prospects. Poor immigration records do not highlight the exact percentage of immigrants from neighboring countries like Nepal and Bangladesh. The continuous flow of migrants from neighboring states and countries has had a greater impact on the economy as well as the on the population density of the state. Today, West Bengal ranks highest among all states in terms of population density per square kilometer.¹⁶³

Rural West Bengal does not have an impressive picture to present. It ranks third from the bottom and only 28.1% of its land is under agricultural cultivation. Punjab and Haryana have a fairly high percentage of agricultural land and are continuously benefiting from the centrally financed irrigation and centrally subsidized procurement. If West Bengal had benefited equally from this centrally financed irrigation and subsidized procurements¹⁶⁴, its economic performance

¹⁶² The population of West Bengal as of March 1, 2001 stood at 80,221,171. The population rose at an alarming rate of 17.84% when compared to the last consensus. The population density per square kilometer is 904 in the state- the highest amongst all Indian states. For more information on population of West Bengal visit Census of India, 2001, <http://www.censusindia.net/profiles/wbe.html>

¹⁶³ See data. (1999-2000). Migration from other countries to West Bengal is not known. Till date, we only have records of inter-state migration, i.e. people moving to other states within the territory of India. The data for inter-state migration for the year 1999-2000 is provided at the end of this chapter.

¹⁶⁴ Under the land procurement scheme, the Government of India announced a minimum support price for Rabi and kharif crops. Wheat, paddy and rice comes under this minimum support price

would have been much better and of a higher order. Majority population in West Bengal derive their livelihood from agriculture. If a fertile agricultural land, like the one in Singur, is acquired then within a few years time, the agricultural output from the state will be negligible. Buddhadeb Bhattacharya defends his measures of acquisition of fertile land as an unavoidable event. He argues that, "if we do not do so, it will reverse the progress. While the national average of fallow land is 17%, it is only 1% in Bengal. While 24% of the state's territory covers urban and industrial areas, forests comprise 13% of the land mass. Thus, the state is left with no option but to use some parts of the remaining 62% agricultural lands for industrialization." It is true that West Bengal has to move ahead with industrialization but not at the cost of fertile agricultural lands. As per the Directorate of Economics and Statistics Report of 2001-02, the total percentage of agricultural land in West Bengal is 76.61% out of which only 28.1% is under irrigation and the land in Singur comes under that 28.1%. If CPM government has to "strike a balance between food production and industrial growth," it should reconsider its decision of acquiring fertile lands for mega projects twice. If you give away your fertile agricultural lands, which have the potential for higher agricultural output in future, you cannot expect to strike an effective balance

scheme and only fair average quality(FAQ) food grains are procured by the food corporation of India under the directions laid down by the government of India. There are special purchase centers allotted by the state government that facilitates "the purchase of food grains from the farmers in such a manner that farmers need not to cover more than 10 K.Ms." In case the farmers get a higher price from their produce they are free to sell it to independent traders or grain dealers. The percentage of levy to be charged is decided by the state government in consultation with Ministry of CA, F&D before the commencement of the marketing season. As mentioned, Punjab and Haryana are the highest beneficiaries of the land procurement scheme and the percentage of levy charges is 7.5%. Uttar Pradesh and Uttranchal have followed the decentralized land procurement system whereby the state controls the purchase, storage and distribution of food grains. The main idea behind this scheme is to release the stored food grains during times of shortage and urgency. Generally, the FCI moves food grains from surplus states like Punjab, Haryana and Uttar Pradesh and so on to deficit states. West Bengal is not covered under the land procurement scheme

between food production and industrial growth. Economic growth of a region can only be ensured when you think of an all round development.

| States | Total Area (Lakh Ha.) | Total Agri Area (Lakh Ha.) | Agri Area as % of Total Area | Irrigated Area (Lakh Ha.) | Irrigated Area as % of total Agri Area |
|---|-----------------------|----------------------------|------------------------------|---------------------------|--|
| Andhra Pr. | 275.45 | 70.00 | 25.41 | 39.45 | 56.36 |
| Assam | 78.44 | 28.00 | 35.70 | 5.72 | 20.43 |
| Bihar | 173.80 | 71.00 | 40.86 | 36.42 | 51.30 |
| Gujarat | 196.24 | 35.00 | 17.84 | 30.42 | 86.91 |
| Haryana | 44.21 | 43.00 | 97.26 | 27.93 | 65.00 |
| Karnataka | 191.79 | 72.00 | 41.92 | 23.63 | 32.82 |
| Kerala | 38.86 | NA | | 3.50 | |
| Madhya Pr. | 443.44 | 112.00 | 25.26 | 63.04 | 56.29 |
| West Bengal | 88.75 | 68.00 | 76.61 | 19.11 | 28.10 |
| Orissa | 155.71 | 54.00 | 35.00 | 20.90 | 38.70 |
| Punjab | 50.36 | 42.88 | 85.15 | 38.47 | 89.72 |
| Rajasthan | 342.24 | 127.00 | 37.10 | 54.21 | 42.68 |
| Tamil Nadu | 130.06 | 38.00 | 29.21 | 29.45 | 77.50 |
| Uttar Pr. | 294.42 | 200.00 | 68.00 | 120.12 | 60.06 |
| Maharashtra | 307.71 | 128.00 | 41.60 | 25.67 | 20.06 |
| India | 3287.26 | 1219.00 | 37.08 | NA | |
| *The data on total area of Bihar, Madhya Pradesh and Uttar Pradesh includes areas of Jharkhand, Chhatisgarh and Uttaranchal respectively. | | | | | |
| Source: Directorate of Economics & Statistics, Ministry of Agriculture, 2002 | | | | | |

What made the CPM government, which once considered itself “as the main architect of land reforms,” to go for rapid industrialization? It is not the question as to which government is in power. We need to look as to how West Bengal fared, in comparison to other states, in terms of industrialization. From 1984 to 2001, industrial capital investment in West Bengal had increased only fourfold. In other parts of India it grew by more than seven times. The percentage of the number of industries that came up during that period was almost static. Approximately, 722 industries came up during a span of 17 years in west Bengal, whereas it grew from almost 97,000 to almost 131,000 for India.¹⁶⁵

The picture of the overall industrial development in the state is not so pleasant. The “slackening pace of industrialization; flight of capital and prolonged industrial unrest has taken its toll,”¹⁶⁶ in the state. The high handedness on the part of CPI (M) has invited intense criticism from opposition parties, social activists, non-governmental organizations and other people’s organizations. The government has been frightfully non-transparent right from the acquisition process to the announcement of compensation package and other financial considerations for the displacees. The government is thus facing the wrath for aggravating the uncomfortable relationship between industry and agriculture.

It cannot be denied that communists have played a very strong role in the industrial decline of the state. During CII¹⁶⁷ gathering Buddhadeb Bhattacharya was very honest in admitting that they have committed mistakes and have played a very irresponsible role in carrying out the acquisition process. Today, the word “gherao” which means surrounding the management has found place in the

¹⁶⁵ Guruswamy, Mohan; Sharma, Kamal; Mohanty, Jeeven Prakash. *Economic Growth and Development in West Bengal: Reality versus Perception*. Centre for Policy Alternatives.

¹⁶⁶ Guruswamy, Mohan. Op-cit. 2005

¹⁶⁷ Confederation of Indian Industry

English dictionary. Trade unions having affiliations to different political parties in West Bengal resorted to “gherao” or similar methods to put forward their demands. Using the “gherao” method, the trade unions in West Bengal became more comfortable with state ownership and the benefits accrued from it, like, for instance, assured salaries and assured pay increases, annual bonuses and full tenures without any relation to corporate wealth. Whenever an industry was rendered sick the state government used to take over to protect the jobs. These sick industries did not contribute much to the economic growth of the state and the result was inevitably slackening pace of industrialization in West Bengal. The overall sickness rate of industries in the state was 4.14% while for the rest of India it was only 2.54%.¹⁶⁸ Industrial decline impacted heavily on West Bengal’s economy. There was an overall decline in the share of agriculture in India. West Bengal was no exception. Agricultural production declined from 33.43% in 1993-94 to 27.36% in 2001-02.¹⁶⁹ Moreover, the share of manufacturing sector in the state declined from 23.02% in 1993-94 to 21.68% in 2001-02.¹⁷⁰ Fortunately, the share of service sector in the state was higher and grew by almost 7.81% during the period 1984-2001.¹⁷¹ Many critics argued that West Bengal was rapidly moving towards post-industrialization without even becoming industrialized. The power sector had a relatively bad performance like other sectors. Though per capita consumption of electricity increased in the state, electrification in villages lagged far behind. Electrification of villages for the rest of India was 86.65%, while in West Bengal it was 78.17%. However, inspite of having such a dismal industrial growth over the years, the percentage of people below poverty line

¹⁶⁸ Guruswamy, Mohan. Op-cit. 17-03-2005.

¹⁶⁹ Ibid

¹⁷⁰ Ibid.

¹⁷¹ Ibid

decreased from 60.52% in 1977 to 27.02% in 1999-2000.¹⁷² It was the same party in power that brought about such a change. Industrial expansion has been undoubtedly depressing over the last few years in West Bengal, but at the same time we need to seriously think whether CPM government in the state is pro-people or anti-people in light of the past and present day changes.

The obvious fact is that the rapid pace of industrialization will displace thousands and thousands of people if rehabilitation and resettlement process continues to be a big failure. The problem of displacement will worsen as industrialization deepens. Though Singur is not a proposed site for SEZ¹⁷³, the question of land acquisition for economic purposes fits in well. If we go by the recent numbers, “around 263 companies have received formal approvals to set up SEZ’s, and another 169 had been granted in-principle clearance by the government.”¹⁷⁴ Whether it is SEZ¹⁷⁵ or formal land acquisition by the government for “public purpose,” one thing is for sure that in future a large

¹⁷² Guruswamy, Mohan. Op-cit. 17-03-2005. The state wise poverty projection for the year 2006-07 is provided.

¹⁷³ SEZ or Special Economic Zones was first introduced on 1st April, 2000. With the liberalization of the Indian economy, SEZ’s were formally approved to provide a “hassle free environment for exports.” SEZ’s primarily focused on manufacturing of goods and rendering of services. The production units in the SEZ’s have to be a net foreign earner and are not subjected to “any pre-determined value addition or minimum export performance requirements.” Payment of full Custom Duty and import policy in force becomes mandatory for the production units in the zone. The April 2000 policy allows for the establishment of SEZ in the public, private, joint sector or by the state governments themselves. The policy also envisioned that certain Export Processing Zones would also be converted into SEZ. The SEZ Act, 2005 was first announced in 2005 but has been put on hold because of the controversies it attracted. The controversy over SEZ has once again questioned the “flawed nature of Indian Democracy” where the government announced policies without taking into consideration their future implications. At macro-economical level, everything looks good with the SEZ coming into force in India. At macro-economical level, there is hardly any policy. The present break in proceedings is mainly due to the absence of a just National Rehabilitation Policy that will look into the resettlement and livelihood concerns of displacees to ensure all round development.

¹⁷⁴ Anand, M, Ramanathan and S. Kalyana, Sunitha Natti. *The Business of SEZs*. Business World, 13th November 2006.

¹⁷⁵ To know more about SEZ, see the SEZ Act, 2005. [<http://www.sezindia.nic.in/SEZ%20Act,%202005.pdf>]

number of people will continue to be displaced as it happened in kalinagar in Orissa and Singur in West Bengal. Singur has really sent an alarm to all political and non-political organizations throughout India that the time has come where we chalk out a pro-people rehabilitation and resettlement program based on justice and equity.

Singur is not a SEZ. It is only the logic of land acquisition that applies perfectly to Singur as well as to the politics of SEZ. The first thing that is noticeable about Singur is that it is not more than forty-five kilometers¹⁷⁶ away from Kolkata. Any industrial house that plans to set up its unit will definitely take into consideration the distance factor from mainland Kolkata. Singur was the ideal location for Tata Motors. The problem was that Tata acquired one of the most fertile lands in West Bengal. Almost 30% of the land is highly fertile in Singur and cropped more than once. The Left government, which has governed West Bengal for more than thirty years contradicts its own demand that an “outcropped land must not be procured for industrial projects.”¹⁷⁷

According to various experts, Singur offers a diversity of vocation for people who are associated with this agricultural area for generations. The land owning farmers, share croppers, small traders, agricultural laborers, landless migrants, resident laborers and so on, are dependent on the fertile lands of Singur. Inter-state migration was never a big problem in India. People from neighboring states relocated themselves in or near Kolkata for better job opportunities not only in the agricultural sector but also in private enterprises that were established by “taking

¹⁷⁶ The actual distance is not known. The distance factor varied in different individual reports. However, from mainland Kolkata, Singur will not be more than 45-60 kilometers.

¹⁷⁷ Devi, Mahasweta and Malay Sengupta, Dipankar Chakraborti, Medha Patkar. *The Public Hearing and Further Investigation on the Struggle by the People of Singur*. <http://aidindia.org/main/content/view/348/74/>. 08-12-2006

over the land for non-agricultural purposes.”¹⁷⁸ Over the years, no such major protests took place because such changes in the economy of West Bengal were acceptable to the people inspite of the inequality and social and economic compulsions it created. Economic transformation that was taking place at a snail’s pace was acceptable as it was manageable for most.

When Buddhadeb Bhattacharya went on to portray himself as an agent of change and hurried on with the industrialization process, it shocked many including the die-hard supporters of CPM (Communist Party of India). The immediate response from supporters, critics, non-governmental organizations and several other pro-people organizations was, “how could a party committed to the poor and marginalized, how could a party that initiated Operation “Bargha”, that so fundamentally empowered the rural poor, now turn against the very poor peasants, who have voted for it year after year?”¹⁷⁹ Now see the other side of the picture- the election scenario in West Bengal. Buddhadeb Bhattacharya promised a change that got him three-fourth of the majority. His campaign agenda promised a “new industrial policy” for West Bengal. Within one year, the changes are quite apparent. But, he did not study the implications well. And the result was massive protest against the Left Government for uprooting the lives of many agricultural farmers in Singur and moving on with the “Tata Motors” project which does not fit into the category of what actually defines a “public purpose.”

¹⁷⁸Ibid

¹⁷⁹ Ghose, Sagarika. *A Reformer of the Poor*.

<http://www.ibnlive.com/blogs/sagarikaghose/223/33706/a-reformer-for-the-poor.html#>.

16-05-2006.

Because of police resistance in the area the actual numbers of displacees are not known. The government of West Bengal came out with a report on December which identified the number of households that are to be compensated, i.e. the reported number of displacees. According to the records, 9389 persons have been identified for compensation which means that they fall in the first category, as mentioned above. Persons having disputed or no legal rights such as agricultural laborers, sharecroppers and small traders are automatically eliminated from the compensation package offered by the government. If anyone wants to read a summary of the Land Acquisition Act, 1894, then a momentary look at the West Bengal report on Singur is a must.

The real picture is obviously different from what the government report says. But to make things clearer and to highlight the discrepancy arising as a result of displacement and inadequate rehabilitation policy, we need to analyze the report in detail as well as the micro-economic problems arising as a result of acquisition of the agricultural land in Singur. Right after the state assembly elections in 2006, Ratan Tata and representatives of the Tata Company met the Chief Minister and struck a deal that was meant to push forward the new industrial policy as promised by Buddhadeb Bhattacharya, the reigning Chief Minister of West Bengal. What was in the deal was not made public till the Tata's chose Singur. The Tata's asked for 1000 acres of land. There were five or six sites offered to the Tata's including some in the backward districts. The Tata's chose Singur situated in the Hoogly district of West Bengal. The formal acquisition of land as on 31st December, 2006 stands somewhat like this- 997.11 acres of land were acquired which included five mouzas.¹⁸⁰

¹⁸⁰ Mouza is a revenue unit for a village.

Table:¹⁸¹

| | |
|-----------------------------|-------------|
| Total land acquired: | 997.11 acre |
| Mouzas involved: | 5 |

Land Details:

| Name of Mouza | Total area of the Mouza (in acres) | Land acquired in the Mouzas (in acres) |
|----------------------|---|---|
| Gopalnagar | 1656.55 | 399.98 |
| Beraberi | 1043.82 | 327.21 |
| Khaserbheri | 229.62 | 180.59 |
| Bajemelia | 355.13 | 47.77 |
| Singherbheri | 310.75 | 41.56 |
| Total | 3595.87 | 997.11 |

As per the report, the acquisition of land had taken place with “due process of law.” Under Section 4 of LAA, 1894; the government of West Bengal published a notification that the land in Singur can be required in the foreseeable future for a “public purpose” or for a company. “Desperate to bring in investments in West Bengal,” the government gave in to the demands of the Tata’s and on 30th August a notification was published thereby declaring that the land in question will be

¹⁸¹ West Bengal Industrial Development Corporation (2006). *Status Report on Singur- as on 31st December, 2006. Status Report on Land Acquisition in Singur, District Hoogly.* http://www.wbidc.comFinalReportSingur_31Dec.pdf. 21-02-2007.

required for “public purpose.” On the whole, the entire acquisition with ‘due process of law’ advanced in the following manner:

1. Issue of notification under Section 6 of Land Acquisition Act – 30th August & 1st September 2006.
2. Declaration of Award under section 11 of the Land Acquisition Act – 23rd & 25th September, 2006.
3. Payment of compensation in accordance with the Award - From 25th September, 2006 onwards and is still continuing.¹⁸²

All the important provisions of the Act, Sections 4, 5A, 6, 9, 11, 16183, were taken into consideration while moving on with the acquisition process. Any objections¹⁸⁴ filed by the “persons interested” have to be decided by the government and the decision of the government on these objections is final. “The state government, vide Govt. Order No. 1703-LA-3M-07/06 Dated 6th June, 2006,”¹⁸⁵ made provision for consent award under section 11(2) and also set the form in which the consents are to be made. The government also agreed to pay an “additional payment of up to 10% of the assessment of compensation made by the Collector to the consenting awardees.” Each and every section of the Act that eased the acquisition process was followed very carefully. The compensation award is not viable for change even if the “person interested” does not accept the compensation after the declaration of Collector’s Award.

The Collector’s Award for the entire 997.11 acres was declared on 23rd and 25th September 2006. After the declaration of the award, the Collector took possession of the land in Singur and on the same day handed all the official

¹⁸² West Bengal Industrial Development Corporation (2006). Op-cit. 21-12-2006.

¹⁸³ For further reference see The Land Acquisition Act, 1894.

¹⁸⁴ Section 5A of LAA, 1894.

¹⁸⁵ West Bengal Industrial Development Corporation (2006). Op-cit. 21-12-2006

documents on land acquisition to WBDIC. 4th of October was important for Singur as 997.11 acres of land was acquired to promote industrial development of West Bengal. It was vested into the hands of the government free from all impediments. On 17th November, 2006, WBIDC acquired the record-of-rights for the acquired lands. Everything went in accordance with procedure laid down under section 50 of the West Bengal Land Reforms Act, 1955. Under Section 4(C) of the Act of 1955, the “conversion of the land from agriculture to factory was done on 21st November, 2006.”¹⁸⁶ The “permissive possession” to the Tata’s to carry on with the preliminary works was given on 27th December, 2006.

As per the terms and conditions of LAA, 1894, certain procedures should be taken into consideration while deciding on the compensation amount payable to the land owners, namely,

- *Basic price*
- *solatium@30% of the Basic Price*
- *interest@12% per annum for the period between the date of notification under Section 4 and the date of declaration of award.*
- *Crop compensation etc. as assessed by the Collector as laid down in Section 23 of the Act.*¹⁸⁷

The state government also agreed to pay an additional 10% compensation to the landowners. For single cropped land (Sali land) the compensation amount was 8.70 lakh¹⁸⁸ per acre and for double cropped land (Suna land) it is 12.76 lakh per acre. In all, 119 crores is the total compensation amount that has to be paid to the landowners and as per government reports only 83 crores have been

¹⁸⁶ Ibid

¹⁸⁷ For further reference see the West Bengal Industrial Development Corporation (2006) Report

¹⁸⁸ Normally, the compensation amount for single cropped land would have been 6.02 lakh per acre and for double cropped land 8.80 lakh per acre.

disbursed. 189 9839 people have been identified, on whose name the cheques are to be issued. 36 crores needs to be disbursed and around 2400 people are yet to receive the compensation amount. The area of land in respect to which payment has been made is 658 crores.

Everything looks good on the report. But the displacement scenario is not so good in Singur. The broader issue is of development versus displacement and Singur is at the epitome of this debate. What constitutes development is still not clear. On one side, the Tata project is promising so many things that will, according to chief minister Buddhadeb Bhattacharya, “.....change the face of not only Singur, but also of the whole of West Bengal.”¹⁹⁰ It is a “precious project” because the Tata’s are planning to launch the cheapest and the most fuel efficient car that will cost around one lakh. As far as employment is concerned, the factory will “generate employment to 2000 people directly and 10,000 people indirectly.”¹⁹¹ The Tata Motors factory will cover around 700 acres of land and the remaining land will be for ancillary units. Moreover, the project will also lead to the establishments of second-tier units in the small and medium sector (SME). SME’s are generally known to be the largest provider of employment and are usually run by local entrepreneurs employing the local workforce. The establishments of SME’s will serve a dual purpose for the government. It will fulfill the prime motive of industrialization of West Bengal and secondly, it will generate employment opportunities as a result of rapid industrialization. On the whole, “the small car project will be the flywheel that will set in motion the other wheels of industrial progress in the state.”¹⁹² But, once again, industrialization is only one component of development. It is indisputable that if West Bengal has to

¹⁸⁹ 31st December, 2006

¹⁹⁰ Chattopadhyay, Shurid Shankar. *Starting Trouble*. Controversy, Frontline, Volume 23, issue 25, December 16-29, 2006.

¹⁹¹ Chattopadhyay, Shurid Sekhar. Op-cit. December 16-29, 2006

¹⁹² Ibid

catch up with other states it has to go for rapid industrialization. But, certainly not at the cost of agricultural land and people who have been dependent on it for generations. When we talk about development, especially in this matter, we have to balance both the sectors (industry and agriculture) very well to ensure all are benefiting from this developmental process.

3.4 Displacement Scenario in Singur¹⁹³

As mentioned earlier, the displacement problem is predominantly micro-economic. The problem is about people who are losing out on their lands and also on their livelihood, leave alone other problems. Agriculture has and still continues to be the bread and soul for tillers of the soil, especially sharecroppers, landless agricultural workers, small traders and owner cultivators and so on. When government knew that the proposed land in Singur has the potential to reap good production in the coming years, irrespective of being a Sali and Suna land, why did it then compromise with the interests of the farmers?

The government dealt with the entire land acquisition process very high handedly. As mentioned earlier, the problem is hardly macroeconomic as the land under question is miniscule when compared to the total cultivated land in the state. According to Abhirup Sarkar¹⁹⁴, its appropriation by the Tata's cannot

¹⁹³ Most of the analysis is based on fact finding studies conducted by different organizations. I have taken recourse to the one conducted by ISI in the month of December-January, Sanhati Udyog, West Bengal and Action Forum, New Delhi. Because of restricted entry in Singur, the recent numbers of displacees are not known. The intensity of displacement is still not clear. The figures provided by these fact finding studies are all approximations which may or may not correspond to the actual number of displacees.

¹⁹⁴ Abhirup Sarkar is Professor of Economics, Indian Statistical Institute, Kolkata. His studies include one on the problems of the potato farmers in West Bengal. In an interview with D.Murali and Gautam Ghosh from Business Line, The Hindu, he quoted the above statement.

affect aggregate food output. The problem is entirely microeconomic that concerns the livelihood problems of the cultivators, sharecroppers, landless farmers and so on. For decades, their “economic existence has depended on those tiny plots in Singur.” Acquisition of land will not only mean displacement of a large proportion of people but it will also be depriving them of their only source of livelihood, i.e. agriculture.

Not many were willing to sell their lands to the government. It is a case of consent through coercion. The result was quite apparent. Local farmers comprising mostly of women stood against the concerned authorities and decided to drive away the authorities. In a clash between tillers of the soil and government authorities, many were injured and few were even killed. The worst case of human rights violations happened in this development versus displacement debate. A sixteen year old was raped and burnt alive in Singur as she stood up against the forced acquisition by the government.¹⁹⁵

In one of the studies¹⁹⁶ where around 400 households were interviewed, the numbers of unwilling sellers were 315. 261.49 acres of land fell under the proposed Tata project out of which only 24.36 acres of land was sold willingly to the government. Going by the number, it is very clear that the consent which the government mentioned in the report is through coercion. This report by Sanhati Udyog¹⁹⁷ was very important as it defeated the repeated claims of the government

¹⁹⁵ Tapasi Malik was a sixteen year old girl and the only daughter of a sharecropper in Singur. Few policemen who were on post in Singur and CPM party cadres have been blamed for this brutal rape and murder of Tapasi Malik on 18th December, 2006. Investigations are still on.

¹⁹⁶ Bhattacharya, Sukhendi and Amitdyuti Kumar, Pradip Banerjee and Others. *Singur 'People's Survey.'* *Facts from the field.* Sanhati Udyog.

¹⁹⁷ Sanhati Udyog is coming up with a comprehensive report on the displacement scenario in Singur on 19th March, 2007.

that the land was given up voluntarily “in lieu of the compensatory cheques.”¹⁹⁸ The report also highlights as to who are actually displaced, i.e. the numbers who can never find a place in the compensation packages offered by the government. Landholdings in Singur are not very large. Only few of the landowners possess more than 0.66 acres of land. Majority of them are poor or subsistence farmers. As far as bargadars are concerned, there are more than 1200 unregistered bargadars and 607 registered ones.¹⁹⁹ The migrant labor force who arrive daily from Bardhadhaman, Bankura and Hoogly districts to earn their livelihood from agricultural activities are the worst affected. Around 800 seasonal laborers coming from economically backward sections of Jharkhand work in the fields of Hoogly for six-eight months and survive on hand to mouth existence. Apart from migrant workers, there are also several permanent migrant families who have settled in Singur for more than two to three decades.

Since the basic issue is one of displacement, it becomes mandatory to include the non-farming households in Singur who derive their income from farming-related occupations. There are around 450-500 cycle cart drivers who “transport crops and agricultural inputs to and from the fields, nearly 200 households are engaged in animal husbandry and over 150 households are vegetable vendors in Howrah, Sealdah, Chucura and the two local markets.” The reason why people do not part with the land thus becomes obvious. The first and the most basic question is “what will they eat? For generations these people have relied on agriculture or related activities. The number of dependents on a small amount of land possessed

¹⁹⁸ Till 4th December, the consent status as per the WBIDC report stood as 632 acres for pre-award consent and 332 acres for post award consent. The total consent was for 952 acres out of the total 997.11 acres of land acquired.

¹⁹⁹ The number of registered and unregistered bargadars again stands in sharp contrast to the first status report on Singur published by the WBIDC. The total number of recorded bargadars according to the Collector was 237. Based on a local enquiry, the total number of unrecorded bargadars is about 170.

by each household is considerably large. The cash compensation no, matter how big the amount, will not last long enough to cater to the livelihood needs of the displacees. It may be very easy for the pro SEZ political leaders to suggest that the displacees can earn by working as domestic help in some officer's quarters. No self-respecting farmer, irrespective of his or her economic status, will voluntarily and contentedly accept such jobs in lieu of tilling their ancestral lands?²⁰⁰ Whose development are we talking about? "*Does the economy and politics of development needs put a price of the self respect of these farmers and their families?*"²⁰¹ For generations they have been cultivating land and any alternate occupations other than agriculture is beyond their imagination.

The worst affected will be the peasant women and children, many of whom have no legal rights over the land. Their skill and knowledge are centered on agricultural production. Agriculture is one sector where participation of women in the production process is the most. Singur is just one of the many occurrences where the vulnerability of the woman will be exposed to a greater extent as they will "lose their access to food producing resources such as land and this could result in hunger and starvation."²⁰² As the history of displacement studies indicate, children inevitably remain the "weakest section of the society"²⁰³ and are the first to "bear the brunt of economic diseases."²⁰⁴ None of the two reports bother to take into consideration that in this whole quest for industrial development they are sacrificing two secondary schools and thirteen primary

²⁰⁰ Sarkar, Avik and Biplab Kumar Kisku. *Special Economic Zones*. Working Paper Series. PGDM, PGP II, IIM Calcutta. Batch 2007

²⁰¹ Ibid

²⁰² Lahiri, D.P and Arpita Ghosh (2006). *Our Land Their Development. A Report of the International Fact Finding Mission on the Forces Eviction of the Farming Communities in the State of West Bengal in India*. People's Coalition on Food Sovereignty (PCFS) and Pesticide Action Network Asia and the Pacific (PAN AP).

²⁰³ Ibid

²⁰⁴ Ibid

schools in Singur. The schools in Singur will be demolished (or have been demolished as Singur stands isolated and cut off from the rest of the world although the media is not barred from going there) soon to give way to this new Tata motors factory.

Several rounds of fact finding missions were carried out by local, national and international teams. There was one unanimous observation- no matter what their economics status is, the majority of people are not ready to give up the lands that have sustained them for so long. "Despite the rising input costs, Singur farmers still want to stick to farming."²⁰⁵ The government has withdrawn the provision of seeds and fertilizers at subsidized rates to the farmers. Considerable damages have been done to the two deep tube wells in the area surveyed by Sanhati Udyog. In spite of all these restrictions, the farmers are expecting to make a "big profit from potato cultivation."

3.5 CONCLUSION

It is very difficult at this stage to state the exact number of people who are displaced and faced the threat of permanent eviction. If we have to summarize in detail the economics and politics of displacement scenario in Singur it would stand like this:

In a desperate attempt to bring investments into West Bengal, the state government gave in to the demands made by Tata and offered them the most fertile tracts which are just 45-60 km from Kolkata. The acquired land will cost the government around 140 crores. Compare it with the price that the Tata's will

²⁰⁵ Bhattacharya, Sukhendi and Amitdyuti Kumar, Pradip Banerjee and Others. Op-cit.

be offering- 20 crores, and that also after a period of five years.²⁰⁶ The biggest irony is that never has a car factory occupied such large acres of land.²⁰⁷ In addition to this, the Tata's also demanded a compensation for giving up the "16 percent excise duty exemption offered by Uttarakhand for locating the car factory."²⁰⁸ The car factory proposes to directly generate 2000 jobs and 8000 indirect ones. But according to noted economist Amit Bhaduri,²⁰⁹ the Tata car factory will only generate about 300 direct jobs and 1000 indirect ones. Time will only tell what is in store for West Bengal.

The acquisition process has really put the government in big trouble. As mentioned earlier, the Tata motors factory that is coming up in Singur is not a SEZ. It is part of the natural process of development and industrialization that requires land. Right from the beginning there were numerous discrepancies when the government went on to acquire the land in Singur under Land Acquisition Act, 1894. Since early 2006, there were constant demands to make the land deals between the Tata's and the West Bengal government more transparent as it was about to decide the fate of the people in Singur. Critics argue that the deal is a clear violation of RTI (Right to Information) Act, 2005. Even after the resistance, the state government did not negotiate well with the people to chalk out an alternate rehabilitation plan. The result was more than obvious. People of Singur formed a local organization to resist the acquisition of agricultural land- the Krishi

²⁰⁶ Bidwai, Praful . *From Singur to Nandigram and Beyond. Development as Dispossession.* Kashmir Times. <http://prafulbidwai.net/>. 29-01-2007

²⁰⁷ The Tata motors factory in Pune that is considered to be one of the giant car factories, occupies 188 acres of land that includes housing for its employees.

²⁰⁸ Bidwai, Praful. Op-cit.

²⁰⁹ Bhaduri, Amit,; Patkar, Medha. *INDUSTRIALISATION: Which way now?* Ekak Matra, May issue (vol. 7 no. 6), Krishi Bonam Shilpo?

Zameen Raksha Committee.²¹⁰ No detailed information on the project had been disclosed for long, even though it was acquired in the name of “public purpose.” According to a survey²¹¹, almost 45-50% of landholders have not accepted the notices, nor given their consent on transfer of land to the government. The survey also stated that publication of notification u/s 4 of the Act was not proper nor was any public hearing held.²¹² The compensation package has always been a bone of contention in any mega project undertaken by the government. Compensation is only in the form of cash as there is no proper state rehabilitation policy in West Bengal. Almost all fact finding studies have found the compensation package as inadequate as it is based on the “notional value of the market.” The land record reports have not been updated regularly “creating complication in land acquisition process and stalling payment of compensation.”²¹³ Though the compensation award is far better than other projects (6 lakhs to 12 lakhs per acre), it is much lower than the present market rate of Singur, which is around 12-24 lakhs per acre.²¹⁴ Above all, the land is agricultural and not a wasteland where an industry should come up. Less than 60 acres out of the 997.11 acres of land acquired is wasteland. The survey outrightly challenges the false claim of the government that most of the land in Singur is a wasteland.

There can be no difference of opinion when we talk about the slackening pace of industrialization in West Bengal. There is a need for development of industries in West Bengal. The Tata project is bringing in industrial development-

²¹⁰Delhi Solidarity Group. *Explaining Ground Realities in Singur; State Violence on Protesting Local Peasants*. Prepared based on inputs from Fact finding reports from various networks and recent articles in the Seminar and other journals on the Singur case(Courtesy: M.V. Bijulal, ISI, Delhi)

²¹¹ Devi, Mahasweta and Malay Sengupta, Dipankar Chakraborti, Medha Patkar. Op-cit. December 8, 2006.

²¹² Ibid

²¹³ Ibid

²¹⁴ Ibid

development which has stirred up a controversy. This development has both positive and negative consequences; the latter can be termed as the “cost of development.” On the positive side, we have a project that will, in the words of Ravi Kant, managing director of Tata Motors, give a kick start to the re-industrialization process of West Bengal.²¹⁵ For the first time, the Tata’s are planning to “roll out cars that will cost around one lakh.”²¹⁶ It will generate direct employment to about 2000 people and 10,000 indirect jobs. In a nutshell, the project will, in the words of Buddhadeb Bhattacharya, change the face of not just Singur, but also the whole of West Bengal. The costs of this development (negative consequences) are enormous. More than 10,000 families who live on this 997.11 acres of land, “are living under the threat of imminent eviction and their livelihood is endangered.” A fertile agricultural land has been taken up that had the potential to produce more than two-three crops a year and was the main source of livelihood for thousands of families, irrespective of them having a legal share on the land. Women and children remain the most vulnerable groups and this is evident by the fact that the ongoing protest in Singur saw maximum participation from women and school children. This acquisition witnesses all sorts of mishaps which could have been avoided- gross human rights violations where a 16 year old was raped and burnt alive, mass arrests of people in Singur and fact finding teams, massive “bandhs” all over the city that disrupted civic life and presence of rapid action force to curb people’s resistance to acquisition and so on. This form of “arrested” development really questions the proponents of development to redefine as to what constitutes actual “development” because, as witnessed over the years, whenever there is displacement the notion of development has been challenged.

²¹⁵ Chattopadhyay, Shurid Sekhar. Op-cit. December 16-29, 2006.

²¹⁶ Ibid

And finally, we need to recapitulate the role of our political leaders and mass leaders who are epitomized as torchbearers of democracy. For Buddhadeb Bhattacharya it has become a prestige issue. His reaction was simple. If Lenin can face grave attacks when he was “leading Soviet Russia on the road of socialism,” why not him? He made it clear that there would be no looking back as the project “involves the very future of the state.”²¹⁷ Buddhadeb Bhattacharya has taken over the duty of a reformer/agent of change. He has everything- the vote of the people, a strong party organization, and a mandate that can really turn West Bengal into a star state. If he really wants to maintain CPI (M)’s image as a pro-people organization he needs to create a whole new language of economic reforms that does not sideline the poor.

What is happening right now in Singur is more or less a “wrestling match between the party in government and the parties in opposition.” Mamata Banerjee suddenly became the leader of the people in Singur and then one fine day she disappeared. The craziest electoral party politics is played here. Democracy was just reduced to a protest that involved bloodshed and mass arrests. She belongs to a party which has involved itself in similar practices, i.e. violations of people’s rights in brutal ways.²¹⁸ If it addresses Singur, it has to take into consideration the right of the people that has continuously been violated over the years across all states in India, especially where BJP government is in power. What Mamata Banerjee has in hand, is the support of the people, especially the poor. Rather than refusing the invitation of the Chief Minister for open talks, she and her party cadres should enter into a healthy political discourse to draft a solid rehabilitation plan or even propose the setting up of a rehabilitation team of experts who can

²¹⁷ Chattopadhyay, Shurid, Shankar. Op-cit. December 16-29, 2006.

²¹⁸ Bijulal, M.V (2006). *Background Note on Singur*. <http://mail.sarai.net/pipermail/urbanstudygroup/2006-December/001176.html>. Urban Study. 8-12-2006.

minimize the displacement problem in the coming years. This is very important as Singur is just a part of the “larger plan of the state government to acquire 43,775 acres of land (mostly agricultural) for industrial purposes in the state.”²¹⁹ Moreover, the rehabilitation of the displaced people has not been very impressive. During 1947-2000, 47 lakhs acres of land were acquired for developmental projects in West Bengal. It affected around 70 lakh people out of which “thirty-six lakh were displaced (DP) and 34 lakh were deprived of their livelihood without being physically relocated (project affected people, or PAP)²²⁰ Displacement is a persistent problem irrespective of the government in power. The need for a wholesome political discourse thus necessitates the plan for a strong rehabilitation program/team.

Project Land Requirement in West Bengal:

| PROPOSED PROJECT | LOCATION | REQUIREMENT(in acres) |
|--------------------------------------|------------------------------|------------------------------|
| Chemical Hub | Haldia | 25000 |
| Eastern Express(Barasat to Raychak) | North and South 24 Paraganas | 600 |
| Setting up industrial units by WBIDC | Various | 850 |
| Germent Park | Sankrail, Howrah | 1,325 |
| Shifting District HQ of 24 Pgs | Baruipur | 3000 |

²¹⁹ Lahiri, D.P; Ghosh, Arpita. Op-cit. October 2006.

²²⁰ Fernandes, Walter. *Not a People's State*.
http://timesofindia.indiatimes.com/OPINION/Editorial/LEADER_ARTICLE_Not_a_Peoples_State/articleshow/792598.cmsLEADER

| | | |
|---|-------------------------|---------------|
| SEZ | Kulpi | 3000 |
| Integrated Industrial Development Centre | Uluberia, Howrah | 2000 |
| Industrial Estate | Kharagpur | 750 |
| Modern Township | Dankuni | 5000 |
| SEZ | Howrah | 2000 |
| Tata Car Project | Singur | 1000 |
| Knowledge City, Health Park, Biotech Park | Near Kolkata Airport | 850 |
| Cement Factory | Sagardighi, Murshidabad | 150 |
| Telcon's payload plant | Kharagpur | 250 |
| TOTAL | | 43,775 |

Source: ET, The Telegraph

The “political double talk”²²¹ is amazingly manifested in West Bengal. One of the eminent leaders of BJP compares Singur and Nandigram massacres with Jallianwala Bagh tragedy, conveniently putting aside Gujarat riots. Congress has a remarkably short memory about the Sikh massacre of 1984. Each and every party has involved themselves in a series of human rights violations. Irrespective of the party in power, such cases of forced evictions are bound to occur when the state gives in to the demand of large corporations in order to promote industrial development. The call for open talks by Buddhadeb Bhattacharya to opposition parties as well as to people's organizations can have two repercussions. First, taking into consideration the ineffectuality of open talks, it will be nothing more than a “wrestling match” between conflicting interests, or second, we can have two solutions, i.e. minimizing displacement through a strong rehabilitation policy

²²¹ Bhaduri, Amit; Patkar, Medha. Op-cit.

and a pro-poor economic reform that gives way to the industrial growth of a region without obstructing the growth and development of the people.

CHAPTER 4

The Problem of Compensation: A View into the Economics and Politics of Rehabilitation and Resettlement Policies

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4.1 Overview

The Indian experience on the rehabilitation and resettlement of displaced people has never been satisfactory. When we are focusing on displaced people we rule out voluntary migrants, as migration is intentional and planned adequately so that people “may easily cooperate to reap the known and perceived benefits better.”²²² Involuntary or forced displacement is something which is uncalled for and people are “not at all socially, motivationally prepared.”²²³ Over the years, the beneficiaries of the project have always been the one who are not directly affected by the project. They remain the “disinherited victims,” with practically no say in the development process. The reason why violence is becoming an inevitable outcome in every mega project is because of the lack of participation of people who are adversely affected by the project and also because the agents of development decide on their fate without even consulting them. What is happening in Singur and Nandigram is just the outcome of this restricted development carried out by the government.

²²² Mahapatra, L.K. *Resettlement with Participation*. The Eastern Anthropologist. 53:1-2(2000), pp.121-140

²²³ Ibid

Till date, as mentioned earlier, we have conditioned ourselves to think of development in terms of dams. The literature on the construction of dams and resettlement as part of the development process is abundant. The Narmada Valley Project has become the icon through which we look at the overall “economics and politics” of displacement and rehabilitation scenario in India. But every mega project comes with specific resettlement and rehabilitation problems and needs. It is surprising that inspite of repeated failure to deal with the rehabilitation and resettlement problems, our agents of development are not ready to learn from their mistakes. Taking on from what Buddhadeb Bhattacharya envisioned about the future of West Bengal from one car factory in Singur, there is only one thing that regular readers like us have to say. If he thought so far about the future of West Bengal, then why didn't he envision on a strong rehabilitation policy in his state. Proponents of development have time and again suggested on moving ahead with the rehabilitation and resettlement of displaced people first rather than with the construction of mega projects. Any leader, who tries to portray himself or herself (just as Buddhadeb Bhattacharya) as an agent of change or a reformer, should study the implications of such changes well. Singur and Nandigram is a result of high-handedness on the part of the CPI (M) government in order to promote the economic development in the state.

The whole paradigm of development has now centered on “industry versus agriculture.” It is all about “reconciling peasant interests with the demands of industrial growth.” This “uncomfortable relationship between industry and agriculture is not something new. Peasants' interests have been sacrificed in the long run to pave way for industrial growth. Talk of any capitalist or socialist regimes- everyone is coping up with this uncomfortable relationship. It becomes even tougher for socialist countries to move away from their image of being “the

leader of the masses,” or “pro-people organization,” to an image that markedly sidelines the interests of the poor who attach so much emotional value to the land in pursuit of rigorous industrial development. Left rules states in India, Venezuela, Bolivia, USSR and China and so on, are all caught in this “uncomfortable relationship.”

The history of land reforms in West Bengal does not present a pleasant picture except for operation Barga. The outcome in Singur is a result of the “growing erosion” in the effective value of land reforms. The reason why Buddhadeb Bhattacharya is portrayed as an agent of change is because he is on the lookout for new alternatives that will promote the growth and development of West Bengal especially in the industrial sector. The Left Government enjoyed a massive support from the people because of its operation Barga. It allowed sharecroppers to register themselves and entitled them to receive a share from the harvest. But, unfortunately many sharecroppers or bargadars preferred to go for “unwritten agreements,” that gave them some “extra privileges...in lieu of their giving up the demand for their share of the harvest.” For years, they remained unregistered along with many migrant workers who reaped benefits from agricultural lands but could not find a place in the compensation package offered by the government over Singur takeover.

Rehabilitation program in Singur is still in its nascent stage. After December, no reports were published by the WBIDC stating the nature of progress. Compensation is mostly in the form of cash though some community development programmes have been undertaken as part of the rehabilitation and training program in Singur, West Bengal. On October, 2006 a WBIDC camp office was set up and 1372 land losers and 443 landless workers were identified. The state government initiated training programs to accommodate the land losers

and landless workers. Under WBIDC, 179 land losers are undergoing training program in Belur Math Ramkrishna Shilpa Mandir. In the second phase, 180 land losers will be sent for the same training of which 146 would be graduates. the training are mainly for jobs of a mechanist, welding, automobile repairing, house wiring and electrical gadget repairing and two or three wheel repairing. Women land losers are mostly trained for tailoring and catering jobs.

As far as community development works are concerned, the WBIDC installed tube wells in Gopalnagar, Beraberi, and K-G-D Gram Panchayats. The high school in Beraberi has also been repaired and upgraded for vocational training by Singer India. The works for widening and strengthening of roads in the local villages has also been initiated. Survey work for re-excavation of Julkia dam has been completed. Rehabilitation of this canal would improve the irrigation potential of adjoining lands as well as facilitate drainage of the entire area.²²⁴ Improvements of drainage channels are also being planned within the villages to reduce water logging during the monsoon. As far as irrigation facilities are concerned, the Committee proposes to install four to five tube wells to improve the cropping intensity of the adjoining areas. Overall, till December, 2006 a sum of ten lakhs rupees have been invested to give effect to the rehabilitation program in Singur.

²²⁴ WBIDC Report. *A Status Report on Singur*. December 2006.

4.2 The Problem of Compensation in India

Payment of compensation to affected persons was never a “content of the definition of Eminent Domain.” It is a result of judicial interpretation and avowed by the doctrine of Universal Law.²²⁵ Over the years, the English Common Law affirmed that payment of compensation was a “necessary concomitant to taking.” In the Pennsylvania case, it established that *a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the charge*. The obligation to pay compensation thus becomes indivisible from compulsory acquisition.

In the Indian context, the right to property in which was once regarded to be a fundamental right has been reduced to the position of a constitutional right. Over the years, there has been a significant erosion of the “right to property” with respect to state takings. A series of constitutional amendments that have taken place over the years has seen the virtual erosion of this right.

Since its inception the Indian Constitution gave all its citizens the Fundamental Right to “to acquire, hold and dispose property” under Article 19(f) of the Constitution. This Fundamental Right could however be deprived under Article 31 which explicitly stated that *“no one could be deprived of their property except by law; no property could be acquired for a public purpose unless the law set the compensation or principles on which such compensation is paid; property acquisition laws must get assent of the President; police powers were provided in relation to property; and property legislation which was not subject to any*

²²⁵ Refer to *Attorney General v De Keyser's Royal Doctrine* (1920) AC 508; *Central Control Board v Cannon Brewery Co. Ltd.* (1919) AC 744; *Pennsylvania Coal Co v Mahon* (1922) 266 US 393.

subsequent judicial questioning on compensation, i.e., land reform legislation, was to be legislated in a stipulated time frame.”

In the Indian context, the right to compensation was clearly laid down in Article 31(2)²²⁶ of the Indian Constitution. In its original form, the Article laid down that “No property....shall be taken possession of or acquired for public purposes under any law...unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.” The compensation amount can be either fixed by the legislature or principles have to be specified by the legislature itself on which the compensation amount shall be agreed upon. This legislative power often saw descending payment of compensation to those affected.²²⁷ This was evident in the Kameshwar case, where the court held that the sliding scale of payment of compensation to the expropriated Zamindars was offensive against Article 14 and totally discriminatory. The Kerela Agrarian Relations Act of 1961 was struck down on the same ground. It was made clear by the Courts that *inadequate payments will not be compensation in law*. Also, discriminatory payments cannot satisfy the provisions of Article 31(2), as it ought to be different from the value of the property that is acquired.

²²⁶ Article 31(2) was a significant improvement over Section 299(2) of the Government of India Act, 1935. Section 299(2) did not consider it necessary that compensation be paid in money unless circumstances demand so.

²²⁷ The Supreme Court upheld the validity of the land reforms act in Uttar Pradesh and Bihar. The acts authorized the payment of compensation to the Zamindars in bonds. Similarly, the High Court in *K.C.Gajapati Narain Deo v Orissa* (1953), held that just because the compensation amount is not paid at once but in installments, it does not violate the provisions of Article 31(2). The Allahabad Court in *Suryapal Singh* case assessed that *compensation means the equivalent in value of the property taken or acquired*. If the compensation amount that is to be given is less than the equivalent value then it will not be regarded as compensation in law and thus a breach of article 31(2).

The whole idea of compensation being “just equivalent” was affirmed in the *Bella Banerjee Case*, Calcutta.²²⁸ It also held that Article 31(2) “requires a just amount to be given for any property acquired.”²²⁹ Moreover, if the compensation amount which the law gives is not fair or reasonable, then it cannot be considered as compensation within that clause. The Constitution of India does not categorically mention the adjectives ‘just’, ‘reasonable’ or ‘due.’ It has been always upheld by the Courts in various cases where the owner has been deprived of his/her land. Harries CJ in *Bella Mukherjee case* upheld that “....In my view nothing can be compensation which is unjust or unreasonable, because if it is not proper equivalent then it is not compensation and anything which is unjust or unreasonable can never be regarded as an equivalent.” the whole equation of “equivalent in value” was applied to the West Bengal Land Development and Planning Act, 1948. The Act limited the amount of compensation to the market value of the land as on 31st December, 1946, irrespective of the period when it will be acquired. Such provisions in the Act were held to be ultra vires of the Constitution and void by the Calcutta High Court and later on by the Supreme Court.

The decision of the Supreme Court in the *Bella Banerjee Case* created an alarming situation. It meant that in all cases of compulsory acquisition of land and property, the government must pay full and fair compensation.²³⁰ Moreover, the courts will have the final say on the principles in which the compensation award is to be given. The two propositions had really put the social and economic programmes of the government in jeopardy.²³¹ It decided to amend clause 2 of

²²⁸ *State of West Bengal v. Mrs. Bella Banerjee*, AIR 1954 SC 170.

²²⁹ Jain, H.M. *Right to Property under The Indian Constitution*. Chaitanya Publishing House, 1968, p.158.

²³⁰ Jain, H.M. *Op-cit.* 1968.

²³¹ *Ibid*, p.164.

Article 31 and put in front of the judiciary that *a law made under it shall not be called in question in any court on the ground that compensation provided by that law is not adequate...the new cl(2) settled that the principle on which and the manner in which the compensation should be determined and given shall be fixed by law and such a law shall not be called in question in any court on the ground that the compensation provided by it is not adequate.*²³²

In less than four years, the Madras High Court reformed the Bella Banerjee case. The logic which was applied in *Dr. Namasivaya Mudaliar v Madras*²³³ is considered to be a “marvel of legal ingenuity which has few parallels.”²³⁴ The Madras High Court did not have the power to amend cl (2) of Article 31 but held that “it is not competent for the legislature to direct that the property acquired for a public purpose shall be ascertained with reference to an anterior and irrelevant date.”²³⁵ The Madras High Court also laid down certain guidelines for calculating compensation. In brief, the Court laid down that the principles for calculating compensation must be based on rational rules and not upon irrelevant dates. The compensation award must be designed properly and should not contain clandestine objectives. The compensation award should cover the whole of property that is being acquired and not merely a portion of it. The Mudaliar case thus stood in clear defense for the protection of property rights.

In the same year, the Madhya Pradesh government held that the payment of compensation for the acquired property shall in no case exceed the market value of the land as on October 1, 1955. Following this, the state government of Madras appealed against the Mudaliar case in the Supreme Court. The decision was given

²³² Ibid. AIR 1961 SC 955.

²³³ AIR 1959 Mad 548.

²³⁴ Jain, H.M. Op-cit. 1968, p.166

²³⁵ Ibid, p.167

on 3rd March 1964 whereby the Supreme Court “upheld the decision of the High Court that the owner of lands was not justly indemnified in being awarded compensation at rates prevailing 10 years before the date of acquisition and, therefore, the impugned provision was a flagrant infringement of Art.31 (2) *as it stood when the impugned act was ended.*”²³⁶ After the *Vajraveli Mudaliar v. Special Deputy Collector*²³⁷ case, the position of the Supreme Court in matters of compulsory acquisition of property stands like this-

The courts can question legislative determination of compensation:-

- *if the compensation provided is illusory,*
- *if the principles for ascertaining the compensation do not relate to the property acquired,*
- *or to the value of such property at or which a reasonable proximity of the date of acquisition,*
- *or if the principles are so designed and so arbitrary that they do not provide for compensation at all.*

*In all such events “one can easily hold that the Legislature made the law in fraud of its powers.”*²³⁸

The legal position before and after the amendment of Article 31 was that of defining the word “compensation.” The legal position is that for compulsory acquisition of property just equivalent of what the owner has been deprived of must be provided for before the provision (Fourth Amendment) can satisfy the definition of compensation.²³⁹

²³⁶ Refer to A IR 1965 SC 190 for full understanding of the judgment.

²³⁷ AIR 1965 SC 1017. The full insinuation of the Vajravelu Case appeared in the Metal Corporation Case, whereby the Supreme Court affirmed the said provisions to be void on the ground that they did not provide for sufficient compensation within the context of Art. 31(2). For further reference see Jain, H.M. op-cit. 1968

²³⁸ Ibid, p.170

²³⁹ Jain, H.M. Op-cit. 1968, p.172

The role of the courts with regard to Article 31(2) seems to be very confusing. The judiciary cannot question the grounds through which the legislature determines the quantum of compensation. A speech by the then Home Minister, Late Pandit Pant introduced this utter confusion. He said:²⁴⁰

The right of private property has not been abolished by this amended Bill nor have the Courts been completely deprived of jurisdiction...justiciability remains and in suitable cases relief can be obtained...while compensation should be paid wherever property is acquired the Courts can be approached only when the compensation is almost illusory or when there has been a fraud on the constitution.

The Fourth Amendment, 1953 is significant as it “goes well beyond merely enabling land reforms.” There was a major change brought about in Article 31, wherein cl.2 of the Article was changed to Clause 2A. After the Fourth Amendment, Article 31, with the inclusion of a new clause 2A read as:

‘No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given and no such law shall be called in question in any court on the ground that the compensation by that law is not adequate.’

²⁴⁰ Lok Sabha Debates, 12th April 1955. The difference between an illusory and inadequate compensation is political and not legal.

The new clause 2A said-

‘Where a Law does not provide for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisition of property notwithstanding that it deprives any person of his property.’

The inclusion of cl.2A explicitly stated that compensation will be paid if and only if there was a transfer of ownership or requisition involving transfer of the right to the possession to the state and not for a deprivation of a property right. Moreover, no courts can challenge the legislature on the grounds that the compensation amount is not adequate. The Bella Banerjee case moved the legislature to work against the judgment given in this case. It moved well beyond the premise of land reform laws and stalled the role of the courts in deciding matters related to inadequate compensation. This is was the first step which explicitly stated that compensation is a legislative matter rather than a judicial one.

Even after the Fourth Amendment came into force, the Courts found grounds on the basis of which the question of compensation can be questioned. This attempt by the Indian Courts resulted in the next constitutional amendment- the Twenty-fifth Amendment. The Vajravelu Case provided the Supreme Court with such an opportunity and it was in this case that the whole idea of “illusionary compensation” came into force. Justice Subba Rao argued that no acquisition laws can be enacted by the legislature if the compensation provided by them is

“illusory.” He reiterated the view in *Metal Corporation*²⁴¹ case also. However, Justice Hidayatullah in the *Shantilal Mangaldas Case* declared the stand taken by Justice Subba Rao as “obiter and not binding.” The whole debate as to what constitutes adequate compensation became complex with the *Bank Nationalization Case*. The Act (Acquisition and Transfer of Undertakings, 1969) under which compensation was determined was challenged on the grounds that it was inadequate. a special bench of eleven judges accepted that the amount is inadequate and “stated the both before and after the Amendment to Article 31(2) there is a right to compensation.”²⁴² The compensation was illusionary and hence did not compile with constitutional provision of providing compensation for an acquisition.²⁴³

The Twenty-fifth amendment replaced the term “compensation” in Article 31(2) with “amount.” The replaced term barred the courts from questioning this “amount” on the grounds that it was inadequate or paid in terms other than cash.²⁴⁴ Article 31C was introduced in the Twenty-fifth Amendment and was meant to protect the laws of the Union or a state government by declaring that these laws were meant to implement the Directive Principles of the state in Article 39(b). Earlier, the Twenty-fourth Amendment authorized the parliament to amend any part of the Constitution, which shall be then put in front of the President for

²⁴¹ AIR 1967 1 SCR 255

²⁴² Singh, Jaivir. *Separation of powers and the erosion of the 'right to property' in India*. Springer Science+Business Media, LLC 2006.

²⁴³ The *Golaknath* case was yet another landmark case which led to the commencement of twenty-fifth amendment. The Punjab Security of Land Tenures Act 1953 was challenged by the *Golak Nath* and his family because a major portion of their land was declared “surplus” under the Act. The family approached the Supreme Court under Article 32 on the grounds that the Act denied them their constitutional right to acquire and hold property and practice any profession under Article 19(1) (f) and Article 19(1) (g). The said act also violated their right to equality before law under Article 14. A special bench of eleven judges heard the case and held that the parliament had no right to abridge any of the fundamental rights guaranteed by the Constitution.

²⁴⁴ Singh, Jaivir. Op-cit. 2006.

his assent. Both these Amendments were challenged but unsuccessfully in the historic Keshavananda Bharati Case. The Court sidelined many aspects of the Golaknath Case but maintained that no constitutional amendment could alter the basic structure of the Constitution.

The Fourth Amendment barred any kind of judicial interference while determining the compensation award. But, at the same time the courts can be approached if the compensation amount awarded by the legislature is illusory.²⁴⁵ Commenting on this confusing role of the Courts, D.N. Banerjee and Douglas J. of the American Supreme Court followed the same line of thinking. Mr. Banerjee admits that, “legally speaking...the offer, by way of compensation, of any positive quantity of money above zero, will satisfy the requirements of the Constitution, and... it will be non-justiciable.”²⁴⁶ In the same context, Douglas J. noted that “the 1955 Amendment casts a shadow over every private factory, plant or other individual enterprise in India because *the legislature may now appropriate it at any price it desires, substantial or nominal. There is no review of the reasonableness of the amount of compensation. The result can be just compensation or confiscation dependent wholly on the mood of the Parliament.*”²⁴⁷ Two things became evident as a result of this. First, in the name of a welfare state the legislature was taking recourse to tyrannical approach under Article 31(2). Second, the fundamental right to property that had been originally guaranteed by the Constitution was largely abrogated by the new clause in Article

²⁴⁵ Since the entire discussion is about “illusory” compensation, it is important to note that in the United States, one of the postulations of the doctrine of judicial review explicitly maintained that the Courts must abstain from deciding upon political questions.

²⁴⁶ Banerjee, D.N. *Our Fundamental Rights*, p.330.

²⁴⁷ Douglas. *From Marshall to Mukherjea(1956)*, pp.224-225

31. Moreover, discriminatory payment of compensation between different owners can also be called for judicial review.²⁴⁸

There are other aspects of the compensation “in respect of which judicial review has not been touched by the Fourth Amendment.”²⁴⁹ The courts can interfere if any of the three circumstances occur.

- In cases where the law permits confiscation of property without giving any kind of compensation whatsoever,
- in situations where the Legislature leaves it to the Executive to acquire or take possession of a property. The payment of compensation, if any, is to be decided by the executive itself and the legislature does not lay down any principles on the basis of which compensation is to be determined, and
- where the compensation award is not fixed by the law but lays down the principles on “which and the manner in which the compensation is to be determined and given and the Executive commits any deviation from the principles laid down by the Legislature.”²⁵⁰

It was thus held that the Fourth Amendment “had removed the adequacy of compensation from the purview of judicial review.”²⁵¹ But on the insistence of the Madras High Court, the Supreme Court defended that the Fourth Amendment has

²⁴⁸ For further reference see *Karimbhil Kunhikoman v. Kerela (AIR 1962 SC 723)*. The Supreme Court held that the payment of compensation at a progressively smaller rate cannot be valid in a case of acquisition of land n exercise of the power of eminent domain(Jain, H.M. Op-cit. 1968, p.174)

²⁴⁹ Jain, H.M. Op-cit. 1968, p.175

²⁵⁰ Ibid

²⁵¹ Ibid

not “abrogated the requirement of a fair equivalent being given for compulsory taking of property.”²⁵²

The Bella Banerjee Case was a big breakthrough because the Supreme Court held that “land should be acquired on payment of market value on the date of acquisition, and that regard must be had to the value of the property with all its possibilities.”²⁵³ However, the owner cannot claim benefits arising out of the project for which the land was compulsorily acquired.²⁵⁴ The 1955 Amendment made it difficult for the Indian Courts to adhere to market value while deciding for adequate compensation. The Vajravelu case marked the “return of the law as laid down in the Bella Banerjee case.”²⁵⁵

The entire debate as to what constitutes “fair equivalent” cannot be debarred from certain considerations as *a) the nature of the property appropriated, b) its history and origin, i.e. how it was acquired, to what use it was put, how much profit it has already earned etc, c) its existing use, d) its relation to the scheme of social reform and welfare, and e) the paying capacity of the community.*²⁵⁶ The constitution makers left it to the legislative body of the government to decide as to what constitutes “fair equivalent.” The legislature used the measure of market value to pay compensation to individual owners whose property was acquired for

²⁵² The whole idea of fair equivalent would depend on the prevailing circumstances during which the compensation amount is to be decided. The constitutional law in America takes into consideration the market value in case of permanent acquisition and rental value for temporary requisition. For time being, this formula found favor with the Indian Courts. For further reference refer to *Ashwini Kumar v West Bengal (AIR 1952 Cal 679)* and *Durganath Sharma v. Dy. Commr. Kamrup.*

²⁵³ Jain, H.M. Op-cit. 1968, p.179

²⁵⁴ The Supreme Court of America also accepted that the very notion of just compensation should exclude *any enhancement of value resulting from the government's special or extraordinary demand for property.* *U.S v Cors., (1949) 337 US 325.*

²⁵⁵ Jain, H.M. Op-cit. 1968, p.179

²⁵⁶ Ibid, p.182

isolated purposes. But, in case of industrial undertaking or acquisition of lands for estates, the legislature decided to pay nominal compensation and defended it on the ground that “where social legislation affecting the community in general or a large section of it demands acquisition of private interests, full compensation can neither be paid nor it is desirable that it should be paid.”²⁵⁷ This pronouncement of the legislature was challenged by the Court and the result was the inclusion of Fourth Amendment. The Amendment explicitly stated that the compensation shall be fixed by law and cannot be challenged under any Court on the grounds that it is not adequate. But the courts decision on the Metal Corporation case and Kunhikoman Case²⁵⁸ abrogated the very premise of Fourth Amendment. Article 31(2) remained the bone of contention. Our Constitution makers assumed that under this Article the legislature can do no wrong as it represents the sovereign will of the people. In case, the legislature does anything wrong the appeal lies with the people and not to the courts.²⁵⁹ This assumed attitude of the constitution makers meant that there was a serious need for a suitable amendment to Article 31(2).

With time, private property could not remain a Fundamental Right and with the commencement of Forty Fourth Amendment Act 1978, Article 19(1) (f) and Article 31 were deleted from the Indian constitution. Today, the right to property is located in a much weaker constitutional right in Article 300-A, which reads, “No person shall be deprived of his property save by authority of law.” this change from a fundamental right to a constitutional right means that no person has

²⁵⁷ Ibid, p.182

²⁵⁸ *Karimbil Kunhikoman v Kerala*, AIR 1962 SC 723

²⁵⁹ Refer to Pt.Pant’s conclusive argument in the Rajya Sabha. (Rajya Sabha Debates, 17 March,1955)

the right to approach the Supreme Court under Article 32²⁶⁰ on the grounds that his/her fundamental right to property has been violated. Before the forty fourth Amendments there were series of other amendments, namely, first, fourth, seventeenth and twenty-fifth amendments made to bring about significant changes in the right to property. Substantial changes in these of these amendments led to the erosion of the right to property and the result is quite evident of it being placed as a constitutional right.²⁶¹

The “institutional location of the compensation” is something we need to identify best. We need to identify as to whether the decisions pertaining to compensation are best located in the Indian Courts or it can be handled efficiently by the “executive and/or legislature. moreover, we still do not have adequate understanding as to what constitutes public purpose and how will presumably benefit all members of the society including the person whose property has been acquired for the said purpose. Fixing of compensation by the executive and/or legislature without “the possibility of judicial review or without following judicial

²⁶⁰ The right to constitutional remedies allows the citizens of India to stand up against anyone even the government of India. the Fundamental Right is described in the constitution as:

Article.32: Remedies for enforcement of rights conferred by this Part.-
 (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

²⁶¹ The substantial erosion of the fundamental right to property can be traced back to the period after Indian independence, when the Congress Party in their drive to put into effect a socialist industrial policy forcefully expropriated the lands of the Zamindars. The Zamindars had gained vast tract of lands during the colonial rule which the government wanted to acquire preferably without compensation. For further reference see Chapter 2 on Land Acquisition Act.

procedures” would mean that there are possible chances of under valuation of compensation. This is bound to disseminate resulting in legislative or executive activism. This act of legislative or executive activism was pointed out by Justice Subba Rao and later in the absence of any “constitutional support for the right to property.”²⁶² The Supreme Court was obliged to support this form of activism by the legislature or executive.²⁶³ Article 31(2) was totally absent and hence judicial elucidation cannot be a “tool to reinduct the doctrine of compensation as concomitance to acquisition or deprivation of property under Article 300-A.”

The Land Acquisition Act, 1894 laid down the basic principles for calculating compensation. Compensation was to be determined taking into consideration the “market value” and on the basis of this allow awards to be challenged in the courts.²⁶⁴ The principle of determining compensation on “market value” presents a difficult situation when we have to deal with acquisitions that involve mass displacements. Going by the history of displacement problems in India, the “market value” measure is “clearly a systematic under compensation for the value lost on account of the disruption of a social world.”²⁶⁵ Since independence, the number of project oustees has been roughly around fifty million (estimated number). Most of them do not find a place in the compensation package because of their disputed or no legal status.

²⁶² Singh, Jaivir. Op-cit. 2006.

²⁶³ For further reference see *Jilubhai Judgment. Jilubhai Nanbhai Khachar vs. State of Gujarat* 1995 Supp (1) SCC 596, AIR 1995 SC 142.

²⁶⁴ Singh, Jaivir. Op-cit.2006

²⁶⁵ Ibid

In India, the doctrine of public purpose cannot be subjected to judicial review. This situation is very different from what Epstein²⁶⁶ observed in his book on “Takings.” Epstein held that public purpose must be opened for judicial review as it involves forced and not mutual exchange. The forced exchange generates a surplus that “should be divided in proportion to the investment made in the State by citizens.” If the surplus is not divided in proportion to the investment made by the citizens, “then strategic enterprises in society will appropriate this surplus-creating a center for rent-seeking activity or capture in the act of takings.”²⁶⁷ The rent-seeking activity is very encouraged in India because the power to determine public purpose lies in the hands of the executive and cannot be subjected to judicial review.

4.3 The Route to Rehabilitation:

Resort to monetary compensation was definitely the easiest way out for the Indian government. The government had to only identify a small group of legal owners of the acquired land and compensate them with cash. The colonial act that facilitates the smooth transfer of land from people to companies did not have any provisions to ensure the resettlement and rehabilitation of people whose families were physically uprooted as a result of acquisition. Displacement was perceived to be a “tragic” and “necessary ritual” for the realization of “public purpose.” The 1984 Amendment eased out the process of acquisition by allowing acquisition for private companies. As a consolation, it increased the solatium amount, i.e. the emotional and other values attached to the land, from 15 to 30% and specifically laid down that the whole process from issuing notice u/s 4(1) to the final award

²⁶⁶ Epstein, Richard, Am

. *Takings: Private Property And The Power Of Eminent Domain*. Harvard University Press, 1985.

²⁶⁷ Ibid

u/s 11 has to be completed within three years.

The careful plan of the Indian government to ease out the acquisition process started right from the days of Zamindari abolition and is following in the liberalization phase. Liberalization has really pushed Indian states to vouch for private investments both from the domestic and international front. “In contrast to the orientation characteristic of the planning era, the Indian state now is oriented to actively supporting private initiative soliciting domestic as well as international capital to invest productively in export oriented manufacturing and information technology processing units in the large cities of India—encouraging this undertaking by actively assisting the accompanying expansion of infrastructure and urbanization.”²⁶⁸ The coming up of satellite towns of Gurgaon, Bangalore and Chennai and others have really highlighted the powerlessness of “local level bodies to influence land use decision.”²⁶⁹ Over the years, they have been continuously marginalized and important decisions pertaining to land use have come to be located “at both the top end of the state government and among special institutions (parastatals) created as extensions of the state in the form of public–private partnerships wherein business interests actively influence decisions with respect to takeover and use of land.”²⁷⁰

The move towards takeover of lands can be justified on the grounds of industrialization, infrastructural development and urbanization—the absence of which would stall the large scale economic activity. In most of the cases, the compensation is systematically under valued. Narmada Dam is a glaring example of it and the trend followed thereafter and even before it. The purpose for such

²⁶⁸ Singh, Jaivir. Op-cit. 2006.

²⁶⁹ Ibid

²⁷⁰ Ibid

takings no longer remains a public purpose and with time turns out to be for a private purpose. The problem of inadequate compensation and “misspecification” of public purpose is something that should be traced back “in the structure of law,” the successive amendments over the years that led to the continuous of the right to property and to the “location of decisions pertaining to public purpose and compensation.” Successive amendments to “right to property,” with respect to state takings, has incessantly weakened and violated the doctrine of separation of powers. Property related amendments gave a momentum to the state takings and removed crucial aspects of the takings from the purview of judiciary and placed it in the hands of executive and/or legislature. Since the compensation is determined by a legislated formula that does not allow scope for judicial intervention, “substantial social costs can emerge in situations where the formula is deficient in valuing compensation.”²⁷¹ Since compensation is mostly determined by the market value of the land, it grossly underestimates the costs borne by the project displacees. Takings for very large projects affect the entire livelihood pattern of the displaced population. Market measure of compensation “represents a systematic under valuation of state liability.”²⁷²

The application of the colonial act in 21st century independent India; the gradual erosion of the right to property; the successive amendments to the Indian Constitution that inevitably strengthened the position of the legislature vis-à-vis judiciary; the purpose of acquiring land being anything other than public and systematic undervaluation of compensation amount resulted in a strong and forceful demand for rehabilitation and resettlement. Rehabilitation and resettlement owes its origin to displacement. It is also an outcome of people’s movement and resistance against mass displacement. The demand for

²⁷¹ Singh, Jaivir. Op-cit. 2006

²⁷² Ibid

rehabilitation and resettlement had sent a clear signal to the Indian government that the affected people are no longer in a mood to suffer displacement and the problems arising thereof.

4.4 Rehabilitation Policy in India

Adequate and proper rehabilitation of those displaced as part of development-induced displacement have always been a difficult issue to resolve.²⁷³ The government simply refuses to learn from previous mistakes arising as a result of “restricted development.” Monetary compensation was never a solution to the question of providing adequate rehabilitation and proper resettlement to project displacees. “Compensation is still the instrument used for restoring those dispossessed and displaced.”²⁷⁴ But flawed compensation and under-financing of reconstruction continues to plague the rehabilitation and resettlement of project displacees even further. When displacement becomes an inevitable outcome of development, the absence of “resettlement capacity becomes painfully obvious.”²⁷⁵ According to Michael Cernea, defining the notion of “capacity” in resettlement debates becomes very necessary. He clearly points out that “the ongoing debates in resettlement policy vitally require a content definition capacity, primarily of institutional and financial capacity to carry out any policy. Short of this, it is unclear which provisions are indispensable for making policy and legislation effective.” Two components of capacity have been identified, one at the institutional level and other at the financial level. Over the years, most of the work on development induced displacement has focused on institutional

²⁷³ Cernea, Michael. *Why Economic Analysis is Essential for Resettlement: A Sociologist's View*. Economic and Political Weekly. July, 31, 1999.

²⁷⁴ Ibid

²⁷⁵ Roy, Arundhati. *The Greater Common Good: The Human Cost of Big Dams*. Frontline, June 1999, vol. 16, no. 11, pp.4-29.

capacity. Here the agent/agents of development, i.e. the state form the basis of debate at the institutional level. Resettlement legislations, public participation in decision-making processes, identifying the vulnerable sections and creation of a dedicated ministry or team for rehabilitation and resettlement of project displacees and so on are part of institutional capacity-building. Financial capacity refers to the monetary and other resources needed to carry out the rehabilitation and resettlement work without deteriorating the economic status and livelihood needs of the displacees. Cernea also highlights that resettlement should be used as an “opportunity for development.” the major problem with financial capacity is that its incapacities are hardly debated in the entire discussion on economics and politics of resettlement in India. It is a pity that everyone talks of resettlement and its absence from every compensation packages offered by the government but does nothing to implement them. Infact a strong criticism that arises in the development economics in India is that *economists have put almost no attention to the economic dysfunctionalities and financial failures in the design and execution of resettlement components of projects, an omission long recognized publicly by some economists, but still an omission.*

To the knowledge of few, there existed a Department of Rehabilitation which was established by the government of India after independence. “The partition of the sub-continent had displaced several million people on both sides of the border which separated India and Pakistan.”²⁷⁶ The department was operative till the late 1960’s but closed down due to unidentified reasons. Going by the present day changes, it would have been beneficial for the government to continue with the department with some major changes in its scope and functions. The problem of

²⁷⁶Fernandes, Walter, Paranjpye, Vijay (1997). *Rehabilitation Policy and Law in India: A Right to Livelihood. Econet, Indian Social Institute, p.1*

rehabilitation and resettlement of displaced people continues to beleague our country for more than hundred years.

4.5 Rehabilitation-A Domain of Sociology and Anthropology

Rehabilitation and Resettlement research has always and still remains the domain of sociology and anthropology. Any significant research on resettlement and rehabilitation of oustees has “emerged primarily within the fields of anthropology and sociology.”²⁷⁷ The cost-benefits analysis and the risk and sensitivity analysis of any mega project fails to take into account the “displacement’s economic and financial challenges.”²⁷⁸ Economic analysis is important because analysis at the socio-anthropological level does not provide ample information regarding the phases involved in displacement and resettlement and rehabilitation of oustees. Pranab Bardhan, a noted economist, perspicaciously observed that “the methodological gulf is particularly wide between economists and anthropologists. I have often observed between the two groups an attitude of mutual indifference, or worse. On the rare occasions when they meet they usually talk past each other.”²⁷⁹ This attitude of mutual indifference is particularly evident in areas of development induced displacements and also the impoverishing risks arising thereof. G.Edward Schuh²⁸⁰(1993) also shared the same line of thinking. He opined:

²⁷⁷ Cernea. Michael.M. Op-cit. 1999

²⁷⁸ Ibid

²⁷⁹ Bardhan, Pranab (Ed) (1989). *Conversions between Economists and Anthropologists: Methodological Issues in Measuring Economic Change in Rural India*, Oxford University, Press, New Delhi.

²⁸⁰ G. Edward Schuh has contributed internationally as an educator, administrator, adviser, consultant, and author in the areas of economics and agriculture, with particular interest in subjects including agricultural and food policy, economic development, international trade, and exchange rate policy. [<http://www.hhh.umn.edu/people/geschuh/>]

Economists have tended to neglect the problems of what anthropologists and sociologists often refer to as “oustees” or displaced people- those who have to resettle in the face of development projects that wipe out the economic activities from which they have earned their livelihood. This neglect is somehow puzzling. Perhaps it occurs because resettlement problem tends to be viewed as a social problem, and therefore one to be dealt with by anthropologists and sociologists. These latter groups of social scientists have brought an important perspective to such projects...But greater involvement of development economists should give more of a forward and dynamic perspective. It should also help put front and centre the idea that it isn't enough just to re-establish those ousted from their previous situations. Rather, the goal should be to re-establish the oustees in such a fashion that they can experience sustained economic growth in the future or sustained increases in per capita income.

For critics, the problem started with classical economics textbooks about development projects. Population displacement arising as a result development projects was something that did not find due place in classical economics, despite their frequency. Even in recent manuals of development economics, this area is vastly neglected. Economists have contributed significantly to the economics of hydro-power but “traditionally overlooked population displacement a dysfunctional by-product of dam building.”²⁸¹ An understanding of two books²⁸² on the economics and politics of resettlement and rehabilitation in India makes this thing clear. No analysis has been done on the “costs incurred by the displaced people or the investments required for their economic recovery. Not even baseline

²⁸¹ Cernea, Michael.M. Op-cit. 1999

²⁸² Jain, Sobhita, Bala, Madhu (2006). *The Economics and Politics of Resettlement in India*. Pearson Longman and Tripathy(2003), S.N. *Economic Development and Problem of Displacement*. Anmol Publication.

data on resettlers' pre-project incomes and economic condition is reported.”²⁸³ Adequate analyses of post-displacement investments are necessary because compensation, especially in the form of cash, has always proved to be insufficient “to enable the displacees to purchase replacement lands and other assets of comparable quality or size, because they either exclude or underpay many affected people.”²⁸⁴ Cernea points out that one of the major reasons why we face resettlement misplanning and failure is because “current methodology externalizes part of the cost, instead of internalizing all costs within project budgets.”²⁸⁵ In addition to this, there is always a lack of political commitment from the side of state and central governments, rampant corruption, improper allocation of compensation award and other factors.

Risk analysis and behavioral risks becomes important when we deal with displacement related problems. And, it is here that economic analysis plays an important role. We need to identify two areas of risks analysis. First, which risks are to be identified, and second, as to whether distribution of risks between project holders and stakeholders are to be taken into account. It is argued that conventional economics only takes into account risk to capital investments rather than on post-displacement risks forced upon the distressed people.

It is a common practice for the government to provide complete guarantee against risks to private investors investing on infrastructural projects. The government takes full responsibility for such risks as it promotes private investments and also gives a major thrust to the economic growth. The same logic of handling such risks does not apply to the “primary stakeholders.” The residents

²⁸³ Cernea. Michael.M. Op-cit. 1999.

²⁸⁴ Cernea. Michael.M. Op-cit. 1999.

²⁸⁵ Ibid

of a project affected area are the worst hit. Except cash compensation, there are no predefined economic and legal policies to “institute risk insurance measures for such primary stakeholders.”²⁸⁶ Considering the limitations of conventional economics in analyzing risks and risks aversion techniques, it is widely held that risk analysis should remain an inter-disciplinary endeavor that identifies contributions from both sociology and economics.

Regarding the areas in which risk analysis can be done, Cernea identified “eight interlinked potential risks to displacement.”²⁸⁷ Occurring at varying intensity, they result in social, economic and cultural impoverishment of the displaced population. These risks are generally not catered to and the result is quite evident. Sixty years of Indian independence and we still do not have an answer to mass displacements arising as a result of development projects. Risks occurring at varying intensity during and after displacement cannot be brought under control through one-time compensation for condemned assets. There is no effort made towards income restoration i.e. establishing the “prior levels of living.”²⁸⁸

The cost-benefit analysis (CBA)²⁸⁹ has been criticized for not taking into account the losses incurred by the displaced. Cost-benefit analysis does not answer the risks accruing to various subsets of individuals. Real impoverishment

²⁸⁶ Ibid

²⁸⁷ Eight risk factors that have been identified by Cernea are landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property and social disarticulation. For further reference see Cernea, Michael.M. Op-cit.1999.

²⁸⁸ Ibid

²⁸⁹ Cost-benefit analysis, as the name suggests, is all about justifying the project economically whereby the sum of project benefits prevail over the sum of project costs. CBA only analyses the total effect of the project design rather than the distribution patterns, i.e. as to who is paying the cost, to whom are the benefits given and finally who are losing out in this development project.

risks are distributed differently than project benefits.²⁹⁰ In a nutshell, the CBA can be criticized from the social as well as market perspective. Valuations in the market are based on voluntary exchange between a willing buyer and a willing seller. Rehabilitation and resettlement of displaced populations is involuntary. Resettlement is never “a marginal valuation decision” for those who are affected. Unwillingly it involves a total life change which CBA fails to analyze.

The whole paradigm of environmental economics has gained importance as a result of these upcoming developmental projects. Environmental losses arising as a result of mega projects were seriously under-researched and were kept out of project budgets and ignored in policy making. But with a strong civil and political recognition for environmental losses, “mainstream economics could not afford to ignore environmental losses.”²⁹¹ Environmental economics has over the years taken into consideration ways to “quantify losses, prescribe economic remedies, and ground environmental projects and policies in solid economic and financial analysis.”²⁹²

What is really needed in the economics of rehabilitation is the inclusion of economic concepts and models that can answer problems of involuntary rehabilitation and resettlement of people. Certain areas that have been identified and need better verbalization are:²⁹³

- *Undervaluation of losses; the market's role versus administrative expropriation;*
- *Risks of decapitalization to the displacees and risk-insurance options.*

²⁹⁰ Cernea, Michael. *The Risks and Reconstruction Model for Resettling Displaced Populations*. World Development. 25-10-1997. pp 1569-87.

²⁹¹ Cernea, Michael. M. Op-cit.1999, p.2155

²⁹² Ibid

²⁹³ Cernea, Michael.M. Op-cit. 1999, pp. 2155-2156.

- *Impoverishment of resettlers, relative or absolute, and the design of effective safety nets;*
- *Patterns of externalization and internalization of displacement and recovery costs (including transaction costs to displacees);*
- *Criteria of financing resettlement in projects;*
- *Distributional inequities in projects entailing relocation;*
- *Re-establishment of the productivity of the displacees through growth enhancing financial investments, additional to compensation.*

The intensity and severity of involuntary rehabilitation and resettlement of people is not something that is going to mellow down in the coming years. If conventional economics moves away from “compensation-centered economics” to an economics of “recovery and growth enhancement,” then we can really provide an answer to inevitable mass displacements.

4.6 The National Rehabilitation Policy in India

In February 2004, the Government of India came up with the first national rehabilitation policy for people displaced by developmental projects. The draft rehabilitation policy is the first one of its kind that has taken some steps to pay heed to the problems of the displaced people and offer them a somewhat better rehabilitation package. The National Rehabilitation Policy of 2004 is a result of a series of draft policies that has been prepared and improved over the years. Critics are of the view that the draft rehabilitation policy does not represent a “shining example” that vehemently takes into consideration the interests of the displaced people. It is just part of the big business plans by the then government to move ahead with its industrialization policy. Till date, no draft rehabilitation policies

have even bothered to mention the advantages of “benefits-sharing,” whereby the proceeds of the projects will be used in helping the displaced people to restore back to their normal livelihood pattern. It becomes an arduous task to analyze each and every draft rehabilitation policy in detail but a brief analysis of what gave way to the 2004 policy can be provided. People’s organizations, non-governmental organizations and individual critics were of the unanimous view that whatever may be the improvements in the policies over the years, the intention of the government was quite clear. More lands were required to move ahead with industrial development but not much would be invested to help the project displacees from whom the lands would be acquired or is acquired. The landless owners and others dependent of the land for their livelihood still find little or no place in the rehabilitation policies that covers only the first category of people as mentioned by Jain and Bala.

It becomes an arduous task if we analyze each and every draft policy in detail. But, as mentioned, each draft policy has been revised to give way to a better compensation package for the project displacees. After the abolition of the Department on Rehabilitation in 1960’s, there as a complete mum regarding a rehabilitation policy or department. The first draft on rehabilitation of project affected persons was prepared in 1985 by a Committee that was appointed by the department of tribal welfare. The Committee, in its report brought into light the fact that 40%²⁹⁴ of the displaced and project affected people was tribals. After eight years, i.e. in 1993, the Ministry of Rural Development (MoRD) came up with another draft policy. The third draft was prepared in 1994 following which thousands of project affected and displaced people, people’s organizations, social

²⁹⁴ Fernandes, Walter. *Rehabilitation Policy for the Displaced*. <http://www.epw.org.in/showArticles.php?root=2004&leaf=03&filename=6967&filetype=html>

activists and researchers and so on, got together and prepared an alternative draft and presented it to the secretary in the ministry of rural development. In 1998, another draft on rehabilitation was prepared but this time it was accompanied by certain amendments to the Land Acquisition Act of 1894. Due to differences in opinion between the Ministry and people's alliances, it was decided that "a policy would be prepared first and that any amendments to the LAA would be based on the principles it enunciated."²⁹⁵

The preamble of the national rehabilitation policy highlights three of the most important concerns. The first concern is whether displacement of people is necessary at all especially taking into consideration the fact that it not only entails loss of livelihood and assets and so on but also 'traumatic psychological and socio-cultural consequences.' The second problem, as discussed earlier in the chapter, is the problem of cash compensation. Cash compensation was never an answer to livelihood and impoverishment risks which the displacees are subjected to. Apart from livelihood expenses, the powerlessness to use the cash effectively results in even greater problem. The third and the most debated of all concerns is that the present day land acquisition law only compensates private property holders. The complete exclusion of a very large section outsees, comprising mostly of landless agricultural workers, artisans and partisans and so on has always remained a bone of contention between various people's organizations on one hand and the governments on the other hand.

The National Rehabilitation Policy remains a policy of concerns. It has not come out with effective mechanisms to overcome the impending crisis. The lacunae in the policy are just an indication *that the policy regresses and moves*

²⁹⁵ Ibid

*back in time.*²⁹⁶ The concerned rehabilitation policy thus comes with lot of conditions, postulations and barriers that indisputably becomes unacceptable and meaningless to those who work and are associated with the suffering of the displaced people. There are certain bone of contentions between the government and people's organizations regarding the compensation package for the affected. Firstly, only those persons who lose one hundred percent of their land will be considered eligible for compensation under the rehabilitation policy. Secondly, if 500 or more families in plains/villages and 250 or more families in hilly or scheduled areas are affected, then only the area will come under affected zone and rehabilitation package will be provided accordingly. In this game of numbers and proportion, a large majority of oustees are kept out of the rehabilitation process. Thirdly, only one hectare of land will be provided to families as part of rehabilitation package. In mainstream economics families with one hectare of land or even less are termed as marginal farmers. In addition to this, if agricultural land is not available it will be replaced by a wasteland. The socio-economic consequences of losing cultivable and fertile land are not new. Since Singur is fresh in everyone's memory, its example will deem fit in this situation. A farmer recently committed suicide after his land was acquired for the upcoming Tata Project in Singur, West Bengal. Sudden threat to one's livelihood consequences results in such unavoidable consequences. A complete rehabilitation package does not limit itself to land only. The psychological fear of being displaced is something we tend to neglect. Displacees need continuous counseling in addition to land or cash as part of compensation package. There is no effort or provisions in the rehabilitation policy to facilitate the purchase of irrigated lands by the state government to compensate the oustees.²⁹⁷ If "benefit-sharing" is one of the most

²⁹⁶ Palit, Chittaroopa. *Short- changing the Displaced: National Rehabilitation Policy*. Economic and Political Weekly. 3-07-2004.

²⁹⁷ Palit, Chittaroopa. Op-cit.2004

widely accepted in State Displacement Acts, then it is high time that the government goes for acquisition of private irrigated lands in small, medium and large sizes to compensate for the losses of the oustees. It is all about sharing the benefits on one's gain to help those who are losing their resources.²⁹⁸ The dams are particularly meant to benefit irrigated lands in that particular state and even neighboring states. In case of acquisitions that involve the economic growth of a state, the government has to really identify areas where the oustees can be relocated and are not devoid of the resources and livelihood patterns that they are accustomed to.

Constitutionally, the rehabilitation policy does not even come near fulfilling the basics of Article 21, i.e. protecting every citizen's right to life. The policy stresses on numbers to calculate the actual suffering of people. This is evident from the fact that the policy is applicable to projects that displace 500 or more families in the plains and 250 in the hills and scheduled areas.²⁹⁹ The basic demand of "land for land" is still a distant dream as most documents restrict themselves to "as far as possible."³⁰⁰ Rehabilitation policy was thought to be an alternative to cash compensation. But it was not totally eliminated from the policy. In case the government failed to provide land or regular employment to the oustees, they shall be compensated with one-time compensation amount that will be equal to "750 day's minimum agricultural wages for loss of livelihood." Monetary compensation is still the order of the day irrespective of the opposition it receives

²⁹⁸ Palit, Chittaroopa. Op-cit. 2004

Note: this will particularly work well with dam projects but not with a mega project like Singur

²⁹⁹ The difference in numbers is due to the fact that nowadays mega projects are taking away lands from the people leaving their households intact. Common property resources (CPR's) that forms a major part of people's sustenance are also used for these projects. The policy does not apply to those people who derive their livelihood from CPR's thus eliminating them from any kind of compensation thereof.

³⁰⁰ Fernandes, Walter. Op-cit. 2004.

from PAP's, social activists and people's movements and so on. In words of Fernandes, *if a PAF is not given a house, it spends all its compensation on building one and has nothing left to begin a new life. To keep above poverty line, the family requires a permanent job, marketing facilities and other infrastructural support without which in a short time it is impoverished and more than often than not, slides to bondage. The policy will legitimize such impoverishment.*

Compensation is still the main financial instrument for restoring the lives of those displaced and dispossessed. No matter how big an amount, monetary compensation has time and again proved to be insufficient when we look at the impoverishment risks the displacees are subjected to in the long run. We realize everything. We realize that money is not the only solution of problem arising out of rehabilitation and resettlement operations. We realize that there is an absence of a strong rehabilitation policy- a policy that would take into consideration new approaches of "benefit-sharing" that arises out of any mega project. The benefits arising out of these mega projects will assist the displacees in rebuilding their lost livelihood and stabilize their economic status. In short, it is all about providing a 'satisfactory rehabilitation and resettlement plan. We also realize that there is significant level of "economic dysfunctionalities and financial failures in the design and execution of projects." We realize that there is an omission- an omission that has not been answered yet.

If acquiring land for a "public purpose" is part of the natural process of development, then it is more than obvious that adequate financing for rehabilitation and resettlement operations is a pre-requisite to such development. No one is expecting miracles at one go. But mega projects like Singur could have become landmark projects if adequate rehabilitation and resettlement operation was done. Michael Cernea duly points out that, "the projects that forcibly

dispossesses people of vital productive assets and dismantle their existing economic systems are seldom equipped by the project owners with sufficient financial resources to rebuild their livelihoods they dismantle.”³⁰¹

If we look at development induced displacement scenarios worldwide, we see marked changes in the policies that governments of these countries used to follow and are following now. The resettlement and rehabilitation operations undertaken by these countries are not just piecemeal policies but “significant macro-societal measures.”³⁰² Such policies of “benefit-sharing” were undertaken in Brazil, China, Canada, Norway, Japan, Colombia and other countries. China will always serve as a learning experience to India and especially Singur in West Bengal, as both of them follow the leftist ideology and are caught in an “uncomfortable relationship,” that sidelines the interests of the poor in pursuit of rigorous industrialization. The basic idea behind benefit-sharing is all about channeling the profits from a mega project to assist the displacees in rebuilding their homes and restore their economic status. In short, it is all about offering “a possible solution to the question of satisfactory rehabilitation and resettlement.”³⁰³ But as experience shows, especially in the Indian context, the cost-benefit analysis is always out of true. There is significant undervaluation of losses, underestimation of the losses incurred by the displacees and hence under-allocation in financing at the very start of the project.³⁰⁴ *Mega projects are by definition high cost and hence require mega investments. The cost of resettlement operations will remain only a fraction of the total investment. Resettlers claim that if the public sector has resources to finance the physical infrastructure built by the project, then it is only right to allocate a sufficient amount for economically restoring those whose*

³⁰¹ Mahapatra, L.K. *Resettlement with Participation: The Indian Experience*. 53:1-2(2000)

³⁰² Ibid

³⁰³ Mahapatra, L.K. op-cit. 2000

³⁰⁴ Ibid

*livelihoods are put at grave risk by the project.*³⁰⁵ This is a very influential argument as huge investments are made in these developmental projects. If a fraction of it is diverted to resettlement and rehabilitation operations, then displacement problems and impoverishment risks can be minimized to a great extent if not eliminated.

The advantages of benefit-sharing have been recognized by many countries including China, Brazil and Colombia and others. Time has come that India also moves ahead with such innovative practices and systematic implementations. India's immediate neighbor China has some of the largest dams that have displaced more than three lakh people per dam. Impoverishment risks among the displaced population were quite high due to inadequate financing for resettlement operations, thus resulting in deep resentment among the project affected persons. Since 1980's, China embarked on a fairly different policy to regulate and control the problems arising out of displacement and improve opportunities for rehabilitation. A series of government policies were enacted that substantially increased "the state financing for Development-caused Forced Displacement and Resettlement (DFDR) processes." In 1985, a Post-Resettlement Development Fund was created and contributions from power companies were used to assist project displacees and resettlers. In 1986, a comprehensive law was adopted that contained "detailed provisions regarding acquisition and displacement operations."³⁰⁶ Compensation norms of the Land Administrative Law were enhanced for reservoirs from medium and large reservoirs. The same law was again re-examined in 1996 and improved in August 1998 by the Ninth National People's Congress. It focused on helping the resettlers to identify new forms of livelihood and production. Thus the Land Administrative Law stands in sharp

³⁰⁵ Ibid

³⁰⁶ Cernea, Michael.M. Op-cit. 1999

contrast to the Land Acquisition Law in India. The LAA, 1894 has not been revised till date and does not contain any provisions for people's sustainable resettlement. Recent legislations adopted by the State Council of China have restricted the authority of the local governments on land acquisitions, as it has been continuously abused by them. Efforts have been made to prevent the loss of arable lands and stop continuous abuse of land acquisition resulting in peasant protests- an effort that is seriously missing in India. China has also put a check on the size of involuntary resettlements and this is evident from the fact that over the past few years, the count of the number of involuntary resettlers in china has gone down in the World Bank reports. It is also a pre-requisite in each province to establish its own "Provincial Resettlement Bureau." The multi-professional staff bureau will look into every aspect of DFDR operations in that province.

Leave alone the setting up of a bureau on resettlement, the Government of India does not even have a database on the actual number of project displacees. Any effort towards the rehabilitation and resettlement of displaced people cannot be done without knowing the nature of displacement and number of displaced people. Till date, people's organizations have relied on estimates that stand in sharp contrast to each other. An official database is necessary to understand the intensity and nature of displacement that takes place all over the country. The first national rehabilitation policy falls short of distinguishing between the type of projects and their size.³⁰⁷ The policy moreover limits its relevance to projects displacing more than 500 families. These shortcomings will strongly hit families who will be inevitably excluded from the list of displaced persons' (DP's) even though they face the same ordeal as them. From previous experiences, one thing

³⁰⁷ Fernandes, Walter. Op-cit. 2004

is very clear. A national rehabilitation policy will not work in all circumstances. This applies to state policies as well. The nature and magnitude of each developmental project is different. Each developmental project demands a team of experts who can analyze the displacement scenario well and chalk out a rehabilitation and resettlement plan accordingly.

4.7 Conclusion

Going by the recent developments, the Ministry of Rural Development (MoRD) came out with a draft National Rehabilitation Policy on 4th October, 2006 and invited comments on the draft policy before 11th October, 2006. As mentioned earlier, each successive draft seems to be an improvement over the other. The only problem is that the Ministry gives a very short span to time to critically analyze its rehabilitation policies. In conjunction with the MoRD and other government Committees, several voluntary organizations and people's groups submitted alternative proposals regarding rehabilitation and resettlement of displacees. The Prime Minister's Office (PMO) turned down an alternative proposal submitted by UPA government's own National Advisory Council (NAC). Each new draft comes with a set of weaknesses that are time and bound repetitive. The government turns a blind eye to alternative proposals submitted by various organizations and this is evident from the fact that in 2006 the government did not accept any of the drafts proposed post consultation.

When a committee under B.D.Sharma came out with a policy for displaced tribal communities in 1985, it also proposed for a uniform rehabilitation policy for those displaced in forced acquisitions. In 1993, the first draft on rehabilitation

came up and explicitly mentioned that the mentioned policy was “done in view of the new economic policy, and the expected rise in the demand for more land and hence displacement.”³⁰⁸ The revised draft of 1994 did not recognize rehabilitation as an exclusive right for the displacees. An alternative draft by civil society organization was never pushed by the then government. In 2004, the National Policy on Rehabilitation and Resettlement of Project Affected Families (PAF’s) was announced by the government. The policy though commendable was challenged on various grounds. The important ones are highlighted as follows:

- *It was pushed in secrecy*
- *Did not address issues raised in the policy draft prepared by the civil society groups in 1995*
- *Continued to accept displacement as given*
- *Poor in details and specific provisions of R&R*
- *A welfare approach rather than a rights approach*
- *Continued to have cash based component*
- *Had no provisions for addressing second generation problems*
- *Problems arising out of forced acquisition were never addressed*

Before the draft National Rehabilitation Policy of 2006 came up, the National Advisory Committee had put up their draft National Development, Displacement and Rehabilitation Policy (2005) on the website. But unfortunately, it did not muster any support and, as mentioned above, was turned down by the PMO. The 2006 draft policy did come with certain characteristic features. It talks about participatory approach in R&R planning. It realizes the ineffectiveness of cash compensation and provides for a provision of land for land. Three new mechanisms were introduced that of social impact assessment; the tribal

³⁰⁸ Delhi Forum. *A Critical Assessment of the Draft National Rehabilitation Policy*, p.67

development plan and the Grievance Redressal Mechanism.³⁰⁹ The policy also considers rehabilitation for 400 PAF's as against the 2003 policy which considered rehabilitation only if 500 or more families are affected. Going by the rapid pace of industrialization, urbanization and infrastructural development and so on, one thing is clear. No rehabilitation policy can stand the test time if it goes by the dictates of Colonial legacy that is rooted in the Land Acquisition Act, 1894.

³⁰⁹ For detailed understanding of the three mechanisms refer to the draft National Rehabilitation Policy, 2006(Ministry of Rural Development [MoRD]). For a critical analysis of the same refer to "*A Critical Assessment of the Draft National Rehabilitation Policy.*"(Published by Delhi Forum)

CHAPTER 5

CONCLUSION

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5.1 Introduction:

The World Bank (WB), which continues to remain the major financial funding agency for large infrastructural projects, had once formulated a well designed policy pertaining to involuntary resettlement. In 1990, the WB came up with *Operational Directive 4.30: Involuntary Resettlement*, which laid down the following directives to India and other developing countries. Even where minimal displacement is unavoidable, the Bank laid down the following guidelines in order to improve the conditions of the displaced persons. Any mega project that will lead to displacement of people should assist the displaced persons in their efforts to improve, or at least restore back the former living standards.³¹⁰ The resettlement plan of development should also aim to improve the earning capacities of displacees and also compensate them for the losses at the *replacement value*. It should create opportunities for “benefit-sharing” coming from the mega projects and offer full time assistance to displaced people in the transition period at the relocation site. The pressure from international Human Rights organizations made it obligatory to instate a proper resettlement and rehabilitation policy in India. Post 1990’s, India came up with a flurry of draft rehabilitation policies to assure the World Bank that it is working on the

³¹⁰ Mahapatra, K.L. *Resettlement with Participation: The Indian Experience*. The Eastern Anthropologist. 53:1-2(2000)

conditionalities laid down by the bank in order to continue its funding. a proper policy on rehabilitation came up in 2004 that was supposedly designed to minimize project induced displacement problems. The policy identified rehabilitation in projects where the affected families 500 or more in the plains and 250 in the hills or scheduled areas. The policy thus comes nowhere near fulfilling the basic directive of the 1990 WB policy on rehabilitation, i.e. even where minimal displacement of people is unavoidable the project should assist, or at help restore, the former living standards of the displaced persons and the project affected persons and families.

India has never achieved the directives of World Bank nor has the Bank taken any effort to provide for the cost of land acquisition. In an era on liberalization of world economies, market forces come to play a very important role. In situations where the market forces are imperfect, the state intervenes to acquire land for mega projects. "The state's role here is to supply the basic requirement- the land, albeit at a reasonable price."³¹¹ The very presence of state intervention confirms to the validity of "eminent domain" doctrine in the liberalized economies even though it has been challenged globally.

The very first impact of market forces on land acquisitions was the increase in the "official rates" of compensation of lands.³¹² The availability of land, unlike other factors of production, is limited. But as a factor of production, its price is determined by the market forces and due to its limited availability the price of land is bound to rise. There is a market for lands everywhere but mega projects especially irrigation projects requires special lands that is situated in certain areas

³¹¹ *Economic Liberalization, the State and R&R* by S.M Jaamdar, in Jain Sobhita, Madhu Bala, "The Economics and Politics of Resettlement in India." Pearson Longman, 2006.

³¹² Ibid.

or locations. This calls for necessary state acquisition where a proposed land is acquired in the name of “public purpose” for “requiring bodies”³¹³ who desire to acquire the required land in as little time as possible and with the minimum of costs incurred. As history shows, acquisition has never been peaceful as owners of acquired land are never ready to part with their lands no matter what price is offered. Individual protests take the form of a movement, which involves various non-profit organizations and landless people who derived their income from the acquired land. The agitation centers around forceful acquisition of land in the name of “public purpose,” demand for better compensation and proper rehabilitation for those dislocated and affected as a result of acquisition.

The practicability of the project automatically gets affected when the requiring bodies approach directly to the land owners who are willing to sell their land for the mega project. The exorbitant price demanded by the landowners for parting with their land calls for necessary state intervention in order to balance the project costs and authorize its implementation. Moreover, if everything is left to the markets, the have-nots that mostly comprises of the landless farmers, women, children, tribals and underprivileged groups and so on cannot expect anything from the market nor can they influence such takings as it is between a willing buyer and a willing seller. State intervention makes resettlement and rehabilitation of those affected a necessity, especially after pressure from international human rights organizations. It has to “deal with a large number of individuals and families who have been displaced from their usual and traditional habitat but who generally fall in the category of have-nots.”³¹⁴

³¹³ Refer to chapter 2 on Land Acquisition: the Exclusiveness and Arbitrariness of the Law.

³¹⁴ Supra note 2.

5.2 Rehabilitation and Resettlement: A Necessity

Resettlement and rehabilitation of people has always been part of the welfare function of the state. Though the WB and other donor agencies acquire lands in the development and liberalization, the onus of rehabilitating and resettling the affected people falls on the state and the funding agencies take no responsibility for it. In most of the cases the acquisitions are for private enterprises which create displacement and benefit from the mega projects. It undoubtedly defies the basic principle of land acquisition, i.e., acquisitions must be for a “public purpose,” which will serve the community at large. The case study on Singur is just another example of land being given to private enterprises to push forward the economic development of the region rather than to promote community welfare. The 1984 Amendment made acquisitions for private companies even simpler. The amendment included the provision that land can be acquired for other companies even though such acquisitions may not be for a “public purpose,”³¹⁵ and if such acquisitions fulfill the conditions laid down in Section 40³¹⁶ and Section 41.³¹⁷

³¹⁵ *Land Acquisition Amendment Bill 1998: Alternatives* by Ernakshi Ganguly Thukral in Pinto, Ambrose, “*State Development and Alternatives.*” Indian Social Institute, 1999, p.177.

³¹⁶ Previous enquiry. - (1) Such consent shall not be given unless the [appropriate Government] be satisfied. [either on the report of the Collector under section 5A, sub-section (2), or] by an enquiry held as hereinafter provided, -

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the [appropriate Government] shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the [Code of Civil Procedure, 1908 (5 of 1908)] in the case of a Civil Court.

5.3 One Act, Many Problems:

Even before the liberalization phase, mass displacement continued to plague India and other developing countries for decades. In India, the root of the problem is traced back to the colonial Land Acquisition Act of 1894. The Act was designed during the British rule to acquire small pieces of land for construction of roads, buildings and public houses and so on. Large projects involving mass displacement were never taken up and thus there were no significant challenges to the LAA of 1894. Ever since independent India embarked on a developmental path, the effectuality of the Act was questioned. Right from the process of acquisition to the method of fixation of compensation and its disbursement and so on, the Act was found to be ineffective in dealing with post-independent displacement problems. The Act only compensates the legal owners of the land leaving a large section of the displaced people who have little or no rights over the land. The 1984 Amendment went a step ahead to validate acquisitions for companies not owned or controlled by the state. The definition as to what

³¹⁷ Agreement with appropriate Government. - If the [appropriate Government] is satisfied [after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40] that [the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40], it shall require the Company to enter into an agreement [with the [appropriate Government]], providing to the satisfaction of the [appropriate Government] for the following matters, namely :-
(1) the - [payment to the [appropriate Government]] of the cost of the acquisition
(2) the transfer, on such payment, of the land to the Company.
(3) the terms on which the land shall be held by the Company,
(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;
(4A) where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed; and
(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work.]

constitutes “public purpose” thus remains within the discretion of government and is liable to be misused often to meet certain needs. By including provisions of land for “project affected” persons and incorporating it within the definition of “public purpose,” the 1984 Amendment Act eased out the process of acquisition but ignored the existence and suffering of the displaced communities.

The 1984 Amendment Act brought some significant changes in the acquisition process. Though lands are acquired for public purposes, the benefits never reach the people who lose out on their lands and properties. Today, most mega projects are highly automated and requires less and less of working force. The bleak promise of a “job” no longer works out in a project that is driven by capital intensive infrastructures. The Tata Motors Factory in Singur just epitomizes the prevailing scenario on state takings. The West Bengal government is coming out with alternative strategies for guaranteeing employment for affected people of Singur as the upcoming car factory doesn’t require extensive labor force.

The need to revise the LAA, 1894 has been adequately emphasized by people’s organizations, various segments of the civil society, non-governmental organizations and others. But, the “political will to handle the impact of displacement and resettlement in a fair, equitable and ethical manner,” is missing and the government makes no effort to introduce new policies and laws that will deal with mass scale displacements and its aftermath. LAA continues to remain the basis for determining land transactions ignoring the “multilayered” problems it creates especially in the legal, economic, social, cultural and technical domain.

The LAA, 1894 is a very carefully designed act that leaves very little space for the people to prevent the acquisition of the land. With the erosion of the right to property, the power of the people to stop such acquisition is practically negligible

and can only be delayed by raising objections. However, in the long run it cannot stop the state from acquiring it. The challenging definition of “public purpose” becomes one of the grounds on which a proposed acquisition can be challenged. The time period for raising objections against proposed acquisition is one month within which an affected person has to collect a lot of information and strengthen his/her arguments. The time period proves to be major obstacle as the affected people are unable to gather sufficient information about the mega project and its implication on the economy as society as well. The plight of the affected people does not end here. The Collector has the final say on the objections raised by the affected people and in such circumstances it is very hard to believe that the Collector will give a decision that goes against government planning. Objections can only make the expensive to be profitable but does not benefit the affected people in any significant way. The concerned Courts can only hear the affected person if their objections has not been considered by the Collector. The concerned Courts cannot decide whether the acquisition is for a “public purpose” or not and can only direct the Collector to consider the objections. The Act also empowers the government with certain emergency/urgency powers, which inevitably cut shorts the entire process of issuing notices and objections to be heard.

The 1984 Amendment Act gave away few consolations to the landholders. The Act specifically laid down that the whole process from issuing notice u/s 4(1) to the final award u/s 11 has to be completed within three years. This was done to facilitate rapid settlement and “keep down the difference between the compensation awarded and the market prices on the date of the Award.”³¹⁸ The solatium amount, which is given for the emotional and other values attached to the land, was increased from fifteen to thirty percent. Incase of

³¹⁸ Vaswani, Kalpana and Vasudha Dhagamwar, Enakshi Ganguly Thukral. *The Land Acquisition Act and You*. Multiple Action Research Group (MARG), 1990.

emergency/urgency situations, 80% of the compensation were to be paid to the landowners on spot. All these consolations are confined to monetary gains with little or no emphasis of those who have disputed legal rights over the acquired land.

Monetary compensation thus remains a part of the reductionist exercise that identifies only legally recognized “person interested” and compensates them at market value with certain percentage of solatium.

As far as the role of government is concerned there is a significant lack of political will to look beyond the scope of monetary compensation and incorporate the sufferings of landless people. The lack of political will has impacted heavily on the overall displacement scenario in India. The Indian government has time and again failed to deliver on such crisis situations. A strong rehabilitation policy that caters to the interests of the displacees is still missing. The persisting policy vacuum is surprising because displacement is not a new phenomenon and has been beleaguering the development of India for long. The presence of political factor still remains one of the most dominant factors in determining the development of India. Development induced displacements not only calls for a strong political will “to handle the impact of displacement and resettlement in a fair, equitable and ethical manner, particularly protecting the interests of the poor and vulnerable affected by forced displacements.”³¹⁹ The responsibility of the government does not stop at formulating a rehabilitation policy only. Every policy that has been adopted requires successful implementation and *consistent*

³¹⁹ “*Ethics and Economics in Resettlement Policy and Practice*” by Michael M. Cernea in Jain, Sobhita and Madhu Bala, “*The Economics and Politics of Resettlement in India.*” Pearson Longman, 2006.

*enforcement.*³²⁰ Policy modifications are and will be necessary to deal with mass scale displacements. The nature and magnitude of displacement is much more severe than in the past because mega projects entails displacement of entire communities rather than few. Policy making in the field of resettlement has to be a process, "...a continuing process of improving and enhancing a policy after its adoption based on lessons derived from of its implementation."³²¹

5.4 Rise of People's Resistance and Movement against Displacement

In this entire debate on displacement versus development, every political actor has a role to play. The state remains the most powerful political actor, whereas civil societies, people's organizations, non-governmental organizations and local populations who really suffer the consequences of forced displacements, are vested with limited powers but nevertheless have spearheaded the entire discourse on rehabilitation and resettlement of displaced and project affected persons. People's movements have definitely cleared the illusion that compensation cannot be defined on monetary terms only. The movement has 'spurred on the process of de-legitimizing the LAA, 1894,'³²² and challenged the whole development paradigm followed in India. It has nevertheless forced the state to minimally accept displacement as an inevitable development and that which physically dislocates the people from their land depriving them of their livelihood and access to the natural resource base. Till date, amendments to the LAA, 1894 and the National Rehabilitation Policy of 2004 has failed to recognize the psychological and socio-cultural consequences of displacement. Successive drafts on

³²⁰ Ibid

³²¹ Cernea, Michael, M. Op-cit, 2006.

³²² Ramanathan Usha.

rehabilitation policy continue to ignore this crucial aspect and the negligence on part of the policy-makers clearly highlights the persisting policy vacuum on resettlement.

The persistent vacuum on rehabilitation and resettlement of displacees gave rise to people's resistance and movement against mass displacement. The rise of people's movement and resistance had clearly given a signal to the policy-makers that the project displacees are no longer "in a mood to suffer displacement."³²³ Loss of livelihood, impoverishment risks, "loss in dignity and often getting cheated of the compensation amount,"³²⁴ made the whole experience of displacement a trauma. Peoples' protest and resistance to mass displacement has resulted in a national awareness of the problem and is also one of the major reasons why policy makers are introducing rehabilitation and resettlements operations into the arena of project displacement. Moreover, the limitation which the colonial LAA, 1894 sets while determining compensation has aggravated the demand for better compensation that includes R&R. The Act specifically lays down the matters that should be considered and matters that should be excluded while deciding compensation. The identification of persons' interested lies within the exclusive domain of the executive and the judiciary can only have a say when a reference is made to the court regarding the quantum of compensation. The special powers that the Collector can obtain during "cases of emergency" makes the whole process of awarding compensation an astounding mix of compulsion with pragmatism.

³²³ 1994 Daft National Rehabilitation Policy.

³²⁴ 1994 Draft National Rehabilitation Policy.

Inadequate compensation is just one of the many problems that the application of colonial law creates. Today, every mega project defies the meaning of “public purpose.” On the pretext of “public purpose” the government acquires land on behalf of companies to promote urbanization, industrialization and the overall infrastructural development of the region. The consequence of such acquisition is generally mass displacement, majority of who do not find a place in the compensation package. Due to disputed or no legal rights over land, they (mostly landless farmers, artisans and vulnerable sections and so on) get automatically excluded, as their loss is other than that of land. Moreover, the benefits accrued from the project never reach to those who actually lost their livelihood and were subjected to impoverishment risks. The aftermath of displacement is something which the act continues to ignore till date and this is one of the major reasons why the process of de-legitimizing LAA, 1894 has been pressed forward by affected families and peoples’ organization.

5.5 Conclusion:

The shortcomings in a single colonial Act gives rise to a series of problems that the government fails or does not want to recognize. Indian government has still hung on to the colonial legacy that holds no relevance today. People’s movement against mass displacement not only calls for rehabilitation and resettlement but also a demand that development has to be an inclusive agenda. Majority of the displacees have very little to claim from a mega project and the cost of this development process inevitably falls upon them, resulting in marginalization and impoverishment of many. The *pari passu* principle thus becomes a necessity when rehabilitation of affected people is sought after. If such a principle is put in place then any mega project, which proceeds in the name “public purpose,” has to

ensure the rehabilitation of the displacees first and then move ahead with these profit-making ventures.

The need of the hour is a sense of accountability and a clear line of authority. The demand for a clear line of authority has been reiterated by Usha Ramanathan³²⁵ and is needed for settling the flow of money in a mega project and “where non-delivery on rehabilitation, and misrepresentation of facts on the ground, will attract a stated penalty.” One single Act can have a grave impact on the people’s life. A “route to accountability” should be the first and foremost demand of people’s resistance and movement against displacement. And finally, where Indian polity thrives increasingly on high growth, industrialization and economic development, there is a need to redefine the interests of the poor because such inequitable economy works ruthlessly against the poor majority. The direct bias for industrial growth sidelines agriculture despite the fact that more than 60% of the population still derives their income from agriculture. In this entire discourse of “industry versus agriculture,” the poor remains the vulnerable lot as they have nothing to gain from either. The lack of government initiative to invest in agriculture really calls for an inclusive development program. The socio-cultural and psychological consequences of displacement are shadowed under these mega projects as they create an image of urban glossiness representing India’s development. Rehabilitation and resettlement becomes important because absence of it will mean inestimable loss and abandonment. An all inclusive development project should not only gear the development of the economy but also the people who sacrificed in the name of development. Ideally, this can be realized and this is surely not too much to ask for.

³²⁵ Ramanathan, Usha. *Rehabilitation: where the truth lies.*

URL: <http://www.thehindu.com/2006/03/31/stories/2006033108571100.htm>

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|--|-----------------------|--------------|--------------|----------------|----------------|------------------|---------------|-----------------------|
| (in '00) | | | | | | | | |
| States/UTs | Andhra Pradesh | Assam | Bihar | Gujarat | Haryana | Karnataka | Kerala | Madhya Pradesh |
| Pradesh | - | 0 | 158 | 513 | 3 | 2944 | 241 | 530 |
| Assam | 172 | - | 6 | 91 | 19 | 8 | 37 | 137 |
| Bihar | 557 | 347 | - | 522 | 2608 | 51 | 50 | 1081 |
| Gujarat | 127 | 12 | 154 | - | 47 | 108 | 252 | 545 |
| Haryana | 0 | 0 | 58 | 0 | - | 5 | 1 | 154 |
| Karnataka | 3364 | 0 | 22 | 46 | 16 | - | 1230 | 1044 |
| Kerala | 404 | 0 | 8 | 90 | 164 | 2119 | - | 203 |
| Pradesh | 182 | 0 | 22 | 613 | 139 | 42 | 111 | - |
| Maharashtra | 1610 | 13 | 15 | 6746 | 205 | 2695 | 691 | 3722 |
| Orissa | 689 | 1 | 414 | 7 | 69 | 56 | 264 | 1131 |
| Punjab | 78 | 1 | 129 | 19 | 3277 | 201 | 111 | 65 |
| Rajasthan | 614 | 82 | 106 | 2957 | 5043 | 261 | 174 | 1973 |
| Tamil Nadu | 1732 | 165 | 60 | 68 | 26 | 3783 | 2903 | 180 |
| Uttar Pradesh | 511 | 47 | 1294 | 3339 | 7612 | 157 | 154 | 9202 |
| West Bengal | 230 | 121 | 1130 | 122 | 19 | 132 | 20 | 785 |
| States/Uts | 1309 | 500 | 2035 | 2965 | 3946 | 1483 | 1596 | 1982 |
| India | 11579 | 1289 | 5611 | 18098 | 23193 | 14045 | 7835 | 22734 |

Note : For any state, all india figure in cloumn is given estimate for total out-migrants from that state to other states uts in india and row all-india give of in-migrants in the state considering those form all states uts in india.

Source : Year Book 2003, Institute of Applied Manpower Research,

Year: Period of fiscal

year in India is April

to March, e.g. year

shown as 1990-91

relates to April 1990

to March 1

1991.

Units: (a) 1 Lakh (or Lac) = 100000.

(b) 1 Crore (or Cr.) = 10000000.

Some part of the footnotes units may not be applicable for this table.

Year: Period of fiscal

year in India is April

to March, e.g. year

shown as 1990-91

relates to April 1990

to March 1

1991.

Units: (a) 1 Lakh (or Lac) = 100000.

(b) 1 Crore (or Cr.) = 10000000.

Some part of the footnotes units may not be applicable for this table.

INTER-STATE FLOW OF MIGRANTS AMONG THE MAJOR STATES IN INDIA-PART II

7835

| Inter-State Flow of Migrants Among the Major States in India - Part II (1999-2000) | | | | | | | | | |
|--|--------------|-------------|--------------|--------------|--------------|---------------|--------------|------------------|--------------|
| | | | | | (in '00) | | | | |
| States/UTsAndhra | Maharashtra | Orissa | Punjab | Rajasthan | Tamil Nadu | Uttar Pradesh | West Bengal | Other States/Uts | All India in |
| Pradesh | 3569 | 552 | 48 | 5 | 1521 | 278 | 308 | 389 | 11059 |
| Assam | 86 | 133 | 104 | 54 | 40 | 442 | 692 | 557 | 2578 |
| Bihar | 3389 | 2096 | 3389 | 548 | 66 | 9793 | 8313 | 1673 | 34483 |
| Gujarat | 6047 | 339 | 69 | 1608 | 0 | 311 | 57 | 319 | 9995 |
| Haryana | 399 | 45 | 3015 | 1769 | 14 | 1835 | 30 | 1342 | 8667 |
| Karnataka | 8836 | 153 | 68 | 147 | 2117 | 177 | 135 | 1127 | 18482 |
| Kerala | 1698 | 2 | 11 | 79 | 3118 | 114 | 181 | 307 | 8498 |
| Pradesh | 5364 | 590 | 199 | 2671 | 77 | 4656 | 131 | 452 | 15249 |
| Maharashtra | - | 476 | 174 | 850 | 900 | 2385 | 240 | 839 | 21561 |
| Orissa | 1008 | - | 47 | 73 | 32 | 70 | 1420 | 137 | 5418 |
| Punjab | 400 | 171 | - | 2553 | 227 | 2543 | 337 | 2736 | 12848 |
| Rajasthan | 2965 | 49 | 907 | - | 408 | 2177 | 729 | 177 | 18622 |
| Tamil Nadu | 3751 | 45 | 11 | 35 | - | 127 | 873 | 1836 | 15595 |
| Uttar Pradesh | 16174 | 68 | 4954 | 2796 | 270 | - | 1996 | 2746 | 51320 |
| West Bengal | 1640 | 1563 | 238 | 366 | 258 | 2140 | - | 554 | 9318 |
| States/Uts | 3839 | 794 | 3486 | 1341 | 2805 | 9885 | 3570 | - | 41536 |
| India | 59165 | 7076 | 16720 | 14894 | 11853 | 36933 | 19012 | 15191 | X |

Note : For any state, all india figure in column is given estimate for total out-migrants from that state to other states/uts in india and row all-india give of in-migrants in the state considering those from all states/uts in india.

Source : Year Book 2002, Institute of Applied Manpower Research,

year: Period of

fiscal year in

India is April to

March, e.g. year

shown as 1990-

91 relates to

April 1990 to

March 19

Units: (a) 1 Lakh (or Lac) = 100000.

(b) 1 Crore (or Cr.) = 10000000.

Some part of the footnotes units may not be applicable for this table.

1991.

**AGRICULTURAL IRRIGATED LAND, NON-IRRIGATED LAND AND
WASTELAND IN WEST BENGAL**

7836

| Agricultural Irrigated Land, Non Irrigated Land and Wasteland in West Bengal | | | |
|---|------------------------------------|---------------------------|------------------|
| -2002 | | | |
| (Area in ' 000 Hectare) | | | |
| State | Agricultural Irrigated Land | Non-Irrigated Land | Wasteland |
| West Bengal | 1911 | 3529 | 572 |
| India | 57055 | 85543 | 63850 |

Source : Lok Sabha Unstarred Question No. 2142, dated 29.07.2002.

STATE-WISE AGRICULTURAL IRRIGATED LAND, NON-IRRIGATED LAND AND WASTELAND: A COMPARISION WITH WEST BENGAL

7829

| State-wise Agricultural Irrigated Land, Non Irrigated Land and Wasteland -2002 | | | |
|---|-----------------------------------|--------------------------|------------------|
| (Area in ' 000 Hectare) | | | |
| States /UTs | Agricultural IrrigatedLand | Non-IrrigatedLand | Wasteland |
| Andhra Pradesh | 4538 | 6440 | 5175 |
| Arunachal Pradesh | 36 | 149 | 1833 |
| Assam | 572 | 2129 | 2002 |
| Bihar | 3682 | 3749 | 2100 |
| Chhatisgarh | * | * | * |
| Goa | 22 | 120 | 61 |
| Gujarat | 3058 | 6616 | 4302 |
| Haryana | 2842 | 786 | 373 |
| Himachal Pradesh | 103 | 446 | 3166 |
| Jharkhand | ** | ** | ** |
| Jammu & Kashmir | 309 | 424 | 6544 |
| Karnataka | 2492 | 7997 | 2084 |
| Kerala | 375 | 1884 | 145 |
| Madhya Pradesh | 6560 | 13279 | 6971 |
| Maharashtra | 2946 | 14786 | 5349 |
| Manipur | 65 | 75 | 1295 |
| Meghalaya | 48 | 173 | 990 |
| Mizoram | 9 | 100 | 407 |
| Nagaland | 63 | 198 | 840 |
| Orissa | 2090 | 3958 | 2134 |
| Punjab | 4004 | 234 | 223 |
| Rajasthan | 5499 | 10574 | 10564 |
| Sikkim | 16 | 79 | 357 |
| Tamil Nadu | 3019 | 2616 | 128 |
| Tripura | 35 | 242 | 2301 |
| Uttar Pradesh | 12691 | 4894 | 3877 |
| Uttaranchal | *** | *** | *** |
| West Bengal | 1911 | 3529 | 572 |
| Andaman & Nicobar Islands | 0 | 38 | 28 |
| Chandigarh | 2 | 0 | 0 |
| Dadra & Nagar Haveli | 5 | 18 | 7 |
| Daman & Diu | 1 | 3 | 4 |
| Delhi | 39 | 2 | 14 |
| Lakshadweep | 1 | 2 | 0 |
| Pondicherry | 22 | 3 | 4 |
| India | 57055 | 85543 | 63850 |

Note : * : Area included in Madhya Pradesh.

 ** : Area included in Bihar.

 *** : Area included in Uttar Pradesh.

Source : Lok Sabha Unstarred Question No. 2142, dated 29.07.2002.

PER-CAPITA INCOME IN DIFFERENT STATES SINCE 1980-81

| Table 2: Comparison of Per Capita Income since 1980-81 (Constant Prices) (Rs.) | | | | | | |
|---|--------------------------------|----------------|--|--------------------------------|----------------|--|
| States | 1980-81 (base Year) | 1992-93 | Average Annual Growth 1981-93 (%) | 1993-94 (base Year) | 2002-03 | Average Annual Growth 1993-03 (%) |
| Andhra Pr. | 1380 | 2060 | 3.39 | 7447 | 10633 | 4.03 |
| Bihar | 917 | 1197 | 2.24 | 3037 | 4048 | 3.24 |
| Gujarat | 1940 | 2641 | 2.60 | 9796 | 13715 | 3.81 |
| Karnataka | 1520 | 2039 | 2.47 | 7838 | 11516 | 4.36 |
| Madhya Pr. | 1358 | 1696 | 1.86 | 6577 | 7038 | 0.75 |
| Maharashtra | 2435 | 3483 | 3.02 | 12183 | 15484 | 2.69 |
| Tamil Nadu | 1498 | 2237 | 3.39 | 8943 | 12839 | 4.09 |
| Haryana | 2370 | 3509 | 3.32 | 11090 | 14757 | 3.22 |
| West Bengal | 1773 | 2145 | 1.59 | 6756 | 10952 | 5.51 |
| Orissa | 1314 | 1383 | 0.42 | 4797 | 5836 | 2.20 |
| Rajasthan | 1222 | 1942 | 3.93 | 6182 | 7608 | 2.33 |
| Assam | 1284 | 1544 | 1.54 | 5715 | 6220 | 0.94 |
| Uttar Pr. | 1278 | 1652 | 2.16 | 5050 | 5610 | 1.17 |
| Punjab | 2674 | 3730 | 2.81 | 12710 | 15216 | 2.01 |
| Kerala | 1508 | 1815 | 1.55 | 7938 | 11389 | 4.09 |
| Himachal Pr. | 1704 | 2241 | 2.30 | 7870 | 11832 | 4.63 |
| India | 5398 | 7345 | 2.59 | 7690 | 10964 | 4.01 |
| Note: Growth rates calculated using compound annual growth rate (CAGR) formula. | | | | | | |
| Source: Indian Public Finance Statistics 2000-01 & 2002-03, Ministry of Finance, Govt. of India | | | | | | |

STATE-WISE POVERTY PROJECTION IN INDIA (2006-2007)

7825

| State-wise Poverty Projection in India (2006-2007) | | | | | | |
|---|---------------|--------------------|---------------|--------------------|---------------|--------------------|
| States/UTs | Rural | | Urban | | Co | mbined |
| | % age of poor | No. of Poor (Lakh) | % age of poor | No. of Poor (Lakh) | % age of poor | No. of Poor (Lakh) |
| Andhra Pradesh | 4.58 | 26.97 | 18.99 | 41.75 | 8.49 | 68.72 |
| Arunachal Pradesh | 37.89 | 3.54 | 4.48 | 0.14 | 29.33 | 3.68 |
| Assam | 37.89 | 95.36 | 4.48 | 1.78 | 33.33 | 97.14 |
| Bihar | 44.81 | 482.16 | 32.69 | 54.74 | 43.18 | 536.91 |
| Goa | 2 | 0.13 | 2 | 0.16 | 2 | 0.29 |
| Gujarat | 2 | 6.88 | 2 | 4.38 | 2 | 11.25 |
| Haryana | 2 | 3.3 | 2 | 1.51 | 2 | 4.81 |
| Himachal Pradesh | 2 | 1.18 | 2 | 0.14 | 2 | 1.32 |
| Jammu & Kashmir | N.A | N.A | N.A | N.A | N.A | N.A |
| Karnataka | 7.77 | 28.66 | 8 | 16.34 | 7.85 | 45 |
| Kerala | 1.63 | 4.03 | 9.34 | 8.01 | 3.61 | 12.04 |
| Madhya Pradesh | 28.73 | 192.07 | 31.77 | 74.46 | 29.52 | 266.54 |
| Maharashtra | 16.96 | 101.61 | 15.2 | 72.68 | 16.18 | 174.3 |
| Manipur | 37.89 | 8.1 | 4.48 | 0.27 | 30.52 | 8.37 |
| Meghalaya | 37.89 | 7.99 | 4.48 | 0.24 | 31.14 | 8.23 |
| Mizoram | 37.89 | 1.88 | 4.48 | 0.23 | 20.76 | 2.12 |
| Nagaland | 37.89 | 8.01 | 4.48 | 0.21 | 31.86 | 8.22 |
| Orissa | 41.72 | 139.12 | 37.46 | 23.57 | 41.04 | 162.69 |
| Punjab | 2 | 3.4 | 2 | 1.95 | 2 | 5.35 |
| Rajasthan | 11.09 | 54.41 | 15.42 | 23.44 | 12.11 | 77.86 |
| Sikkim | 37.89 | 2.08 | 4.48 | 0.03 | 33.78 | 2.12 |
| Tamil Nadu | 3.68 | 12.46 | 9.64 | 31.61 | 6.61 | 44.07 |
| Tripura | 37.89 | 10.7 | 4.48 | 0.28 | 31.88 | 10.98 |
| Uttar Pradesh | 24.25 | 373.16 | 26.17 | 111.25 | 24.67 | 484.41 |
| West Bengal | 21.98 | 137.53 | 8.98 | 22.21 | 18.3 | 159.73 |
| Islands | 3.68 | 0.1 | 9.64 | 0.14 | 5.82 | 0.24 |
| Chandigarh | 2 | 0.02 | 2 | 0.19 | 2 | 0.21 |
| Dadra & Nagar Haveli | 2 | 0.04 | 2 | 0.02 | 2 | 0.06 |
| Daman & Diu | 2 | 0.03 | 2 | 0.01 | 2 | 0.04 |
| Delhi | 2 | 0.19 | 2 | 3.18 | 2 | 3.38 |
| Lakshadweep | 1.63 | 0.01 | 9.34 | 0.02 | 4.59 | 0.03 |
| Pondicherry | 3.68 | 0.13 | 9.64 | 0.7 | 7.72 | 0.83 |
| India | 21.07 | 1705.26 | 15.06 | 495.67 | 19.34 | 2200.94 |

Abbr. : N.A : Not Available.

Source : Rural Development Statistics 2002-03, National Institute of Rural Development.

Year: Period of fiscal year in India is April to March, e.g. year shown as 1990-91

relates to April 1990 to M

Units: (a) 1 Lakh (or Lac) = 100000.

(b) 1 Crore (or Cr.) = 10000000.

arch 1991.

**SICK/WEAK INDUSTRIAL UNITS DECLARED UNDER WEST
BENGAL RELIEF (APRIL 2003-DECEMBER 2004)**

7833

| Sick/Weak Industrial Units Declared under West Bengal Relief (April, 2003 to December, 2004) | | |
|---|------------------|---|
| Name | Employees | Status of Revival |
| Annapurna Cotton Mills Ltd. (Non-BIFR) | 700 | Closed as per decision of GOI/BIFR Schemes require revision |
| Bharat Brakes & Valves Limited (CPSE) | 600 | Being revived |
| Burn Standard Limited (CPSE) | 3500 | Being revived |
| DBLAB Limited | 50 | Being revived |
| Ganges Manufacturing Co. Limited | 6000 | Being revived |
| Gem Refineries Limited | 350 | Being revived |
| Gouri Sankar Jute Mills Limited | 4000 | Being revived |
| India Jute & Co. Limited | 5000 | Being revived |
| Kusum Products Limited | 450 | Being revived |
| New Central Jute Mills Limited | 8000 | Being revived |
| Opec Innovations Limited | 700 | Being revived |
| PC Chandra & Co. | 200 | Being revived |
| RDBT Textiles | 1500 | Being revived |
| Sankar Gas Industries Limited | 250 | Being revived |
| Swaika Vanaspati Products | 200 | Closed |
| SWIL Ltd. | 1000 | Being revived |
| Titagarh Paper Mills Ltd. | 800 | Being revived |
| Jessop & Co. Ltd. | 1400 | Being revived |
| Angus Jute Co. Ltd. | 4600 | Being revived |
| Vijayshree jute Co. Ltd. | 3800 | Being revived |
| Kankinarrh Jute | *4700 | Being revived |
| Calcutta Jute Co. Ltd. | 1200 | Being revived |
| Hada Textile Ltd. | 800 | Being revived |
| Supreme Paper Mills Ltd. | 1500 | Being revived |
| Anglo India Jute Mills Ltd. | 4700 | Being revived |
| Kelvin Jute Mills Ltd. | 2700 | Being revived |
| Howrah Mills Co. Ltd. | 6000 | Being revived |
| Webfil Ltd. (CPSE) | 400 | Being revived |
| (SPSE) | 200 | Under restructuring programme |
| Ltd. | 2000 | Being revived |
| Universal Paper Mills Ltd. | 500 | yet to start by new prooters |
| Calcutta Silk Manufacturing Co. Ltd. | 200 | Being revived |
| Caledoniun Jute & Industries Ltd. | 4700 | |
| Total (33 units) | 72700 | |

Source : Bureau of Applied Economics and Statistics, Government of West Bengal.

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