

CHAPTER V

POLICY OF RESETTLEMENT AND REHABILITATION AND ITS IMPACT ON FARMER'S RIGHT TO LAND

Awareness about the issue of resettlement is developing intentionally due to the efforts of concerned institutions and individuals across the world. The focus is on evolving the basic principles that could be adhered to in a resettlement programme, regardless of project locations. It is certainly realized that the specific policies and programs would vary according to countries and region's physical and financial resources as well as the socio-political system within which the programme is implemented.³⁷⁹ However, policies and programs framed for fairly similar geo-political units can have substantially different impacts depending upon the implementation.

THE U. N. INITIATIVE

- 1. United Nations Guiding Principles on Internally Displaced Persons, 1998:** - The United Nations has declared a Guiding Principles on Internally Displaced Persons, 1998 provide protection against arbitrary displacement; offer a basis for protection and assistance during displacement. Principle 6(C) of the same prohibits the arbitrary displacement in cases of large-scale development projects. Still, the subject was gradually faded into oblivion until 2003 when the draft National Rehabilitation Policy was notified by the NDA government. This policy came into effect in February, 2004 as the National Policy on Rehabilitation Policy on Rehabilitation and Resettlement for Project Affected Families. At this, the National Advisory Council being unsatisfied with this sent its own revised policy draft to the government. The bureaucracy then brought out a revised version

³⁷⁹ Ed. William P fisher, Towards Sustainable Development, Struggling over India's Narmada River; M.E. Sharpe Armonk, New York, London, First published in 1995 at Pg. 261.

of the 2003 Policy in 2006 which has become the National Rehabilitation and Resettlement Policy, 2007. On this issue, again, the Parliament has brought the Rehabilitation and Resettlement Bill, 2007. and the Land Acquisition (Amendment) Bill, 2007 which includes 'land for land', to the extent Government land available in their resettlement areas;³⁸⁰ preference for employment in the project to at least one person from each nuclear family subject to the availability of vacancies and suitability of affected person.³⁸¹ Now let's have a look over these steps of the government.

2. **The United Nations Comprehensive Guidelines on Development Based Displacement, 1997:** - The present the United Nations Comprehensive Guidelines on Development-Based Displacement, 1997 emphasises that States should secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection for all persons under their jurisdiction against the practice of forced evictions from their homes and/or lands and common property resources they occupy or are dependent upon, thus eliminating or limiting the possibility of an individual, group or community residing or working in a particular dwelling, residence or place. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups. These obligations are of an immediate nature and are not qualified by resource-related considerations.³⁸² The UN Guidelines also says that the states should ensure that eviction impact assessments are carried out prior to the initiation of any project involving all

³⁸⁰ Clause 7.4. 1 The Rehabilitation and Resettlement Policy, 2007.

³⁸¹ Clause 7.13.1 The Rehabilitation and Resettlement Policy, 2007.

³⁸² Section 3.9, The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

the affected persons, including women, children and indigenous peoples shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives which could result in development-based displacement, with a view to fully securing the human rights of all potentially affected persons, groups and communities.³⁸³ The states should refrain from introducing any deliberately regressive measures with respect to *de jure* or *de facto* protection against forced evictions.³⁸⁴ All persons subjected to any forced eviction not in full accordance with the present Guidelines, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.³⁸⁵ All persons, groups and communities have the right to suitable resettlement which includes the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable.³⁸⁶

CORPORATE INITIATIVE: GLOBAL APPROACH

Corporate social responsibility through financing for development has become a reality in many countries. True corporate social responsibility (CSR) is not just about planting some trees along the boundaries of an industrial unit or employing some local people temporarily. CSR also means taking into account the

³⁸³ Section 3.12; Section 3.13 & Section 3.16 The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

³⁸⁴ Section 3;10 The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

³⁸⁵ Section 4(24), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

³⁸⁶ Section 4(27), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997

Resettlement and Rehabilitation of the project affected families. In current jargon, this practice is known as 'financing for development'. Recently, the Union Government has decided to roll back one percent of the profit from the major projects for development and welfare of the project area³⁸⁷ so that the local people also benefit from it. Prof. Micheal Cernea, a former World Bank expert on resettlement and rehabilitation, in an article cited many examples of benefit sharing mechanisms beyond the ordinary monetary compensation paradigm.³⁸⁸ One interesting example came from Norway.

NORWAY: - Norway not only adopted a law in 1997 that ensured redistribution of a portion of the tax paid by the power companies acquiring land to local populations but also, affected Municipalities used to receive 10% of the electricity generated by the companies.

CHINA: - In China,³⁸⁹ there is no recognition of the individual rights over land. The owner of land is the Government. Land is considered as the property of the nation. The Chinese Government recognises the lease holding of its land to its citizens for the agricultural, residential or other purposes. However, one of the most interesting feature of the Chinese policy that is followed at the time of acquisition of land used by a person or land leased to a person involved in agricultural activities includes inter alia-

- (1) The ascertainment of alternative income of such persons;
- (2) To make the relief packages supporting the livelihood of such people [victims of land acquisition] as much as flawless;
- (3) To give sufficient financial assistance to meet the expenditures for managing their food, habitation/ shelter, wearing apparels,

³⁸⁷ Reported in The Hindu: 25th January, 2009 at pg. 07.

³⁸⁸ Abhijit Guha, Good Corporate; Published in The Statesman, 5th September, 2008 at pg. 07.

³⁸⁹ Madan Ghosh, Reported in the Ganashakti: 27th December, 2008 at pg. 04.

medical expenses, and even the cremation of the people who are infirm, lost the capacity to work, who do not have kins or near relatives etc.

All these arrangements must not be inferior to the already locally existing practices.

JAPAN: - Japan has conducted land- leasing experiments to minimise tension and conflicts inherent in land acquisition and population relocation required for dams and reservoirs. For building the Jintsu- Gawa dams the Japanese government instead of acquiring land, made agreements for the owners to lease out their lands to the private companies so that the land losers could receive an upfront payment as well as regular rents. So the land losers for the dams are still receiving regular rents for the land now under deep water after 50 years as recent research has confirmed.

Japan's innovative strategy for building the Numata dam is another example of good CSR. In this project the Japanese government calculated that about 10,000 agriculturists would be displaced by the reservoir. In order to make arrangements for the rehabilitation of the would -be displaced families, the government made plans to convert 1,500 ha of dryland on the slopes of Mount Akagi into paddy fields and set up irrigational facilities at the government's cost. The government then decided to allocate to each resettled families twice the amount of land they had in their original habitat. This unique arrangement was ready for implementation, but for other reasons the construction of the dam was cancelled in 1972. However, this original plan is still relevant for replication.

THE INDIAN SCENARIO

Resettlement doesn't work in isolation and is a function of the general, administrative and socio- cultural traditions of a particular country or state. Resettlement function is a function of entitlement policies timely preparation of resources, adequate resettlement

plans based on detailed socio- economic surveys, development of well- staffed resettlement organizations, effective (broad based) participation of the affected and the host communities in the resettlement efforts and the existence of a socio- political and administrative environment conducive to efficient implementation of rehabilitative programs. At this juncture, special emphasis is to be given to the protection of the Common Property Resources (CPRs).³⁹⁰ These resources generally escape the attention of policy framers. The design, timing and inter- relationship of the above components are crucial for determining the outcome of the implementation³⁹¹ programme.

The National Policy, Packages and Guidelines for Resettlement and Rehabilitation (NPRR- 1998)³⁹²: accepts the following principles-

- Displacement should be minimized;

³⁹⁰ The Common Property Resources (CPRs) are resources accessible to the whole community of a village and to which no individual has exclusive property rights. They generally include village pastures, community forests, wastelands, dumping places, watershed drainage, village ponds, tanks, rivers, rivulets and river beds etc.

³⁹¹ In the international human rights regime the term '*enforcement*' refers to coerced compliance, while '*implementation*' refers to supervision, monitoring and general effort to hold duty- holders accountable. Implementation is further sub- divided into Promotion- preventive measures to ensure respect for human rights in the future and Protection- responses to violations that have occurred in the past. The means and methods of implementation may be summarised in three forms of promotion and five forms of protection. Promotion of human rights is achieved through developing awareness, standard- setting, and interpretation and creation of national intuitions. The protection of human rights involves a complex web of national and international mechanisms to monitor, judge, denounce, and coerce states as well as providing relief to victims. In the domestic level, law is binding and the courts and police are available to use force to compel compliance.

³⁹² At this, a rehabilitation policy was first mooted in the mid 1980s when a draft of a rehabilitation policy mostly applicable to all future dam projects, industrial, mining and developmental projects.³⁹² Another draft policy was brought by a committee appointed by the Ministry of Welfare, Govt. of India in 1985. Again, the draft rehabilitation policy by N.C. Saxena in the 1990s didn't pass through despite many positive aspects. But, it was first drafted only in 1993. Thereafter, the Second Draft prepared by the government was approved by the Committee of Secretariats on 28th November, 1997.

- The public purpose based on which people are displaced or otherwise deprived of their livelihood should be defined;
- Prior informed consent to be affected by it should be mandatory after the project is explained to them and if they see that it is according to public purpose thus defined properly;
- Replacement value to be the norm for compensation, against the present norm of market value which is totally inadequate.
- Right to life and dignity enshrined in Art. 21 of the Constitution should be respected. So, the displaced persons should have a better lifestyle after displacement than before it because they are paying the price of national development.
- Displaced persons (DPs/ PAPs) should be the first beneficiaries of any project.
- Rehabilitation is mandatory and should go on side by side with the project.
- Land for land is recommended to all and is mandatory for tribals. Compensation is to be provided for common property resources and forest lands that may be acquired from their dependants.
- The DPs/ PAPs are defined in a way as to include not only land owners but also those who depend on it without owning it and those who have common property resources as their sustenance.

There are certain shortcomings in the NPRR, 1998. It doesn't define the term 'public purpose'. Again, this policy is yet to be implemented.

National Rehabilitation and Resettlement Policy, 2007³⁹³: -

Land is one of the most important factors which affect the interests of a farmer if acquisition is made over it by anybody be it government or any other. The salient features of this policy are -

- This policy is applicable not only to the persons affected by acquisition of land for projects of public purposes, but also to the involuntary displacement of a permanent nature due to any cause.
- The beneficiaries of policy again includes the families whose source of livelihood is adversely affected, i.e., any tenure holder, tenant, lessee, agricultural and non- agricultural laborers, landless persons, rural artisans, small traders etc.
- Free house site to the affected families whose house has been acquired or lost to be provided.
- Land for land to the extent of availability of Government land.
- Social impact assessment by independent multi- disciplinary expert group made mandatory in cases of displacement of 400 or more families in plain areas and 200 or more families in tribal and hilly areas, DDP blocks or areas mentioned in the V & VI Schedules of the Constitution.
- Involvement of stakeholders in R&R through R&R Committee at project level comprising of representatives of SC/ ST and women of the affected area along with the representatives of NGOs working in the area, banks, Panchayati Raj representatives.
- Project affected families to be compensated for shifting the belongings from the project site to the rehabilitation site.
- Effective monitoring arrangement for timely rehabilitation and resettlement

³⁹³ Reported in The Hindu, June 28, 2008 at pg. 07.

- Amendment in the Land acquisition Act, 1894 proposed to incorporate the consequent amendments as a result of Rehabilitation & Resettlement Policy, 2007.
- In case of transfer of acquired land, 80% of the net unearned profit would be shared with the original land owners or their legal heirs.

Proposed Bill On The Amendments To The Land Acquisition Act, 1894: - The Land Acquisition (Amendment) Bill, 2007 proposes to amend the Land Acquisition Act, 1894, by defining the term 'public purpose' as land acquired for defence purposes, infrastructure building or any project that would be beneficial to the general public. The said Bill has the following features-

- The term 'affected person' has been redefined. Now it will include not just the land holder, tenant or lessee of the land but also those dependent on the land such as agricultural and non- agricultural labourers, landless persons, rural artisans and so on whose livelihood is connected to the acquired land and who have been living in the affected areas for over five years preceding the acquisition.
- The ambit of persons interested proposed to be redefined for inclusion of tribal and other traditional forest dwellers also.
- Provision for acquisition of land for companies to be deleted.
- The government can use land acquisition powers for only three purposes: (a) strategic uses like the armed forces, (b) public infrastructure projects and (c) where the project being set up by a person (which includes any company or association or body of individuals whether incorporated or

not) serves a larger public purpose and meets the 70% norm.³⁹⁴

- It specifies that the government will help to acquire 30% of the total land required after the company or the body has purchased 70% of the land from the willing sellers. The rationale is that if a company buys the land through private negotiations on a 'willing seller to willing buyer basis', the government can then negotiate with the 'unwilling' landowners to acquire the residual land.
- Compensation of the land is to be calculated at the market value.
- Provision for solatium to be enhanced from the existing 30% of the market rate to 60% of market rate in cases of normal acquisition and 75% in case of urgent acquisition.
- Compensation will be given within timeframe before actual displacement.
- The bill also proposes that a social impact assessment study be conducted in case of large- scale displacement of local dwellers. It stipulates that the acquisition costs should include the payment for loss, damages and cost related to the resettlement of displaced residents. The bill recommends that the current market price of the land be assessed before deciding on the compensation package for residents.
- It also makes it mandatory for each state to establish the Land Acquisition Compensation Dispute Settlement Authority (LACDSA). At this, the investors may feel that the percentage specification should not be mandatory. It should be left to the state authority to acquire the land. Getting the

³⁹⁴ Government shall acquire land for private companies only when private requiring bodies acquire atleast 70% of the land requirements through direct purchase, then only the Government will acquire remaining 30% area.

land from owners could be problematic as it involves tackling of land sharks like the Promoters in the real estate sector, small-time politicians or individuals wanting the sell land at a price higher than the market value. Again, the bill states that the LACDSA staff need not have any judicial qualification, meaning that the officials may not be lawyers or a judge which is again questionable.

- When it comes to compensation, the proposed legislation continues to view it only in monetary terms. Consequently, the only challenge it takes on itself is to arrive at the fair value of land acquired. Since the records with the registration department do not reflect the correct market value, the committee has suggested that land values spread over three it only in monetary terms. Consequently, the only challenge it takes on itself is to arrive at the fair value of land acquired. Since the records with the registration department do not reflect the correct market value, the committee has suggested that land values spread over three years preceding the date of notification be considered for this purpose. It also recommends that independent experts could also be involved. These are definite improvements over the existing methods. But the question how to expand the notion of compensation to include other social costs such as loss of livelihood remains to be addressed. The committee thus suggests the solatium be raised to 60% of the land value from the current 30%.
- Alternative forms of compensation such as employment and pension are envisaged only under the proposed Resettlement and Rehabilitation Bill, 2007. Even this is applicable only where 400 or more families (in plains) are affected by land acquisition. Where the number of people displaced is lower, the families have to settle for what the

Land Acquisition Bill offers. These anomalies need to be addressed and non-monetary forms of compensation provided for.

- Land acquired for a purpose remains unutilised for a specified time, would revert to Government.

Unfortunately, the said bill includes conflicts of opinions on certain issues e.g the government's power to acquire only 30% of land and in certain rehabilitation measures against which the proposal or recommendations of the Parliamentary Committee without paying heed before the passage of the bill which passed in the Lok Sabha on the last day of Parliament on 25th day of February, 2009.

National Human Rights Commission & Relief And Rehabilitation: - Again, on this very issue, the National Human Rights Commission has organized the National Conference on Relief and Rehabilitation of Displaced Persons on 24- 25th March, 2008 in New Delhi while the following issues were stressed by the Commission-

- Full compliance with the ILO Convention 107, and other international human rights instruments relevant to displacement, relief and rehabilitation to which India is a party.
- The resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act, 1894.
- The need of the State and Central Governments to reexamine and amend laws, regulations and practices.
- Adequate rehabilitation packages to those who are adversely affected by mega development projects.

- Procedure laid down in the Wild Life Protection Act, 1972 in regard to the rights of the affected persons and their rehabilitation has to be followed.
- Incorporating policy measures such as maintaining electronic lists of dead and missing, widows, children and young girls, list of properties partially or fully destroyed or damaged and centralized collection and distribution centers where relief materials could be received from NGOs and private organizations.
- The social impact assessment of projects which is to be conducted simultaneously with any environmental assessment.
- The appointment of Administrator for Rehabilitation and Resettlement with respect to large projects involving involuntary displacement of large number of people.³⁹⁵

Again the NHRC has recommended interalia, the followings on development induced displacement-

- i.* The basic principles in the National Relief and Rehabilitation Policy [NRRP] must be incorporated in the Rehabilitation and Resettlement Bill, 2007.
- ii.* There should be a mechanism to ensure equitable sharing of project benefits with the displaced people. This may be in terms of providing direct or indirect employment or reservation of a quota of shares etc.
- iii.* The conditional availability of certain resettlement provisions³⁹⁶ in the R&R Bill, 2007 should be put under scanner.
- iv.* Time limit should be defined for various stages in the process for acquisition of land. Besides, where land has been acquired and has not been used for intended purpose

³⁹⁵ Section 9, The Rehabilitation and Resettlement Bill, 2007.

³⁹⁶ Section 36 (1); 41 (i); 49(4), The Rehabilitation and Resettlement Bill, 2007.

or any other public purpose, then instead of auctioning the land, option should be given to the original owner to take it back on laid down terms.³⁹⁷

- v.** The public interest should justify any large-scale development projects, authorities should hold public consultation with people likely to be displaced.
- vi.** The concept of eminent domain should be in line with the constitutional obligations and the proposed amendments to the Land Acquisition Act, 1894 and the relief and resettlement bill should provide for more scope for consultation/ participation of affected people both in the acquisition as well as consultation/ participation of affected people both in the acquisition as well as relief and rehabilitation process.
- vii.** In case of development based displacement there should be the principle of minimal displacement.
- viii.** Where agricultural land is sought to be acquired, it should be mandatory that area of wasteland equal to double the area acquired will have to be acquired and reclaimed for public purpose or at least funds for the same should be deposited in a special fund to be created for the purpose of rehabilitation of displaced persons or in the Central Relief and Rehabilitation Fund.
- ix.** It shall be mandatory for all local bodies to formulate land use plans and building rules so as to minimize and regulate conversion of agricultural lands for other uses. No non-agricultural activity should normally be allowed in areas marked for agriculture unless there are overriding and compelling reasons in public interest.

³⁹⁷ Section 22 of the Land Acquisition Bill, 2007.

- x.** It has been the experience that where infrastructure projects like highways, roads are planned, the land values of the adjoining areas go up. Appropriate legislations should be put in place to charge additional duty/ tax for such enhanced value, at least at the time of the subsequent transfers of land and sums so collected should be transferred to the Central Relief and Rehabilitation Fund or any special fund created for the purpose of rehabilitation of the displaced persons.
- xi.** Carrying out of social and environment impact assessment, local people especially those who are likely to be displaced and/ or some expert NGOs should be consulted and necessary norms to be laid down.
- xii.** Where there are multiple displacements, it is necessary to compensate the displaced people appropriately e.g. by enhancing the solatium amount provided for in the bill or otherwise.

Very recently, while considering enhancement of compensation of Rs.200 per sq.m. of land in Curti village acquired for construction of Panda bypass road; a Division Bench of the Hon'ble Supreme Court constituted by *Justices R.V. Ravindran and B Sudershan Reddy* in an order has held³⁹⁸ *"A long strip of land measuring more than two thirds of an acre lying alongside the Highway cannot be treated as a land without vale or without a potential for development, merely on the ground that the law relating to Highways prohibited construction on either side of the Highway, upto a depth of 40metres from the centre of the Highway."*

³⁹⁸ Reported in The Statesman: 28th September, 2009 at Pg 05.

COUNTER LAND REFORMS POLICY

*"...the farmers should be given remunerative compensation
wherever land is acquired."*

Dr. Manmohan Singh³⁹⁹

The land reforms in India, could not be implemented successfully either due to the reason that the laws are defective or frequent filing of litigations by the owners of the land especially on the matter of taking of possession ceiling surplus land by the government. The Constitution (49th Amendment) Act 1983 was enacted by the Parliament in August, 1984 which put 14 land reforms laws in the Ninth Schedule of the Constitution to provide the immunity to these measures from being challenged in the court of law. The Constitution (81st Amendment) Bill, 1994 was passed in 1995 placing land reform laws in the Ninth Schedule. However, the move towards land reform has not been fully successful due to absence of required political will in the country. Land reforms must include both

- (a) Providing land to the landless peasants and
- (b) Protecting the land rights of the existing farmers.⁴⁰⁰

Such programme should aim at-

1. Reduction of poverty,
2. Increasing productivity,
3. Ensuring food security and
4. Bringing peace and justice to the people.

Presently, it is noticeable that the mode of land reform in the state of West Bengal is going on the following lines-

- **Land Bank:** - Form Land bank with an area of 5000 acre of acquired land with a created fund of Rs. 500 crore.⁴⁰¹

³⁹⁹ Reported in The Times of India: 28th October, 2008 at pg. 04.

⁴⁰⁰ Bharat Dogra, Land reforms and Justice, Published in The Statesman: 13th October, 2009 at pg. 06.

⁴⁰¹ Reported in The Ananda Bazar Patrika: 15th February, 2009 at pg. 04.

- **New industries on closed factories:** - Set up industrial units at abandoned factories in the state that have been remained closed for years. The government has laid a proposal before the Central government to either set up industrial units in the closed factories in the state by itself or hand over to the state government where the state will set up industries.⁴⁰²
- **Unused land being held by the promoters to be acquired:** - In many cases of developmental activities, the state feels the scarcity of land. Promoters of different parts of the state are purchasing land from the poor and keep those lands unused for long without using after constructing the boundary wall and sell those out when the price hikes and earn huge profit at the instance of building of infrastructures at the expense of the government. The state government has taken the policy to acquire such lands to undertake the developmental activities.⁴⁰³
- **Ownership of land to the Bargadars:** - Presently, the government of West Bengal is considering the policy of giving the ownership to the bargadars. Initially through '*Operation Barga*' in late 70's the Government successfully brought the landless people under the direct control of the government through securing them from termination on any reason and also giving such people '*patta*' over the vested lands. Again, due to proper irrigation programmes, the state could convert mono- crop lands into duo- cropping or multi- cropping land. This led to the significant growth of agricultural production initially.

Since 90's new problems started coming due to the reasons as under-

⁴⁰² Reported in The Times of India: 3rd March, 2009 at pg. 06.

⁴⁰³ Reported in the Ananda Bazar Patrika: 2nd February, 2009 at pg. 01.

1. The cost of production in agriculture increased manifold. Selling off of agricultural land, division of land into small holding in the aftermath of operation Barga took place. No adequate initiatives have been taken by the government regarding the supply of high quality seeds, fertilisers or availing the expensive modern farm practices to them.
2. Repeated bumper crop resulted in shortage of storage facilities and food processing units in the state for the agricultural produces.
3. Lack of proper marketing of the agricultural produces.

Under the new plan, the government wants to confer the ownership to the bargadars⁴⁰⁴ on buying such lands directly from the original owners due to reasons inter alia-

(i) The bargadars to a great extent harass the raiyats on several reasons; (ii) The relevant bargadars or share- croppers don't want to share the crops regularly with the raiyats as prescribed under the Act.⁴⁰⁵

(iii) The Raiyats under the Act is not in a position to sell out the land to some other persons except the Bargadars while the bargadars are unwilling to purchase such lands.

Under these circumstances, the government is planning to directly purchase the lands from the raiyats and the same is to be sold to the bargadars on long term loan. This will facilitate them in the ways as-

(a) The bargadars will enjoy the ownership of land;

(b) Enjoying the ownership they will get the loan from banks or other financial institutions in case of distress giving the said land on mortgage.

- **Giving of land rights to long - term occupants:** - The state Urban Development Department has been considering

⁴⁰⁴ Reported in The Ananda Bazar Patrika: 21st March, 2008 at pg.01.

⁴⁰⁵ Section 16, The West Bengal Land Reforms Act, 1955.

giving land rights to the long term occupants of state government land. Under the new policy it has been proposed to enable occupants to secure housing loans against such occupation.⁴⁰⁶ It is important to mention that even, the Planning Commission has admitted that as many as rural household lack homes of their own. Such people either live in the house constructed on the land of others or provided by landowners in return of forced labour.⁴⁰⁷

- **Pattas for residents of forests:** - The state government has decided to distribute *pattas* to the people living in the forests under the Scheduled tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This initiative of the government is expected to enable the residents of the forest area to make good use of the forest produces.⁴⁰⁸

Ceiling laws:- Land is the biggest item of asset or wealth holding in rural areas but still in most of the states except West Bengal and a few other states is very inequitably distributed among the rural community. Hence, it is the ceiling on holdings. The main purpose of land ceiling is to bring about a wider and equal ownership and use of land what exist at present. In other words, more people should own and use land and smaller holders and cultivators should have more of it. In West Bengal, in late 70's Operation Barga endowed the land less people to enjoy land. Thus here, land has become fragmented. Since 2005, in West Bengal, the investment boom is a continuous phenomenon. The flow of investment is mainly continuing on the line of Software; Iron and Steel; Real Estate; Petro- Chemical; Engineering etc. In addition to these, a great number of SEZs proposals either are on the way of execution

⁴⁰⁶ Reported in The Statesman: 24th July, 2009 at pg. 01.

⁴⁰⁷ Bharat Dogra, Land reforms and Justice, The Statesman: 13th October, 2009 at pg.

06.

⁴⁰⁸ Reported in The Statesman: 14th July, 2009 at pg. 04.

or are waiting for the clearance of the B.O.A. (Board of Approval) of the Central Government throughout the country. To set up an industrial unit the first and foremost necessity is the land which is causing displacement of people. Thus, to bring about the balanced development of different regions of the state while ensuring the minimal displacement of people, first attempt should be made to develop the non- arable or less fertile lands for industrial purposes. Given the fact that West Bengal has low quantum of non- arable land, the conversion of some agricultural land for industrial use may have to be considered. Again, a plea is peeping in the mind of the statesman, scholars, and policy makers on the event of relaxing the ceiling laws. If ceiling laws are relaxed and the agricultural income were to remain to exempt from tax, there will be a rush to invest in land, which would benefit only the large farmers, businessman and moneyed people from all walks of life. It will encourage the corporate sector to enter into the agricultural sector for the commercial production of high value and processed agricultural products and even, they may be encouraged to set up contract farming. The land prices would soar. Another intermediary group of speculator would emerge, but millions of small and marginal farmers would be pushed off their land and in the absence of alternative employment opportunities, such marginal farmers with small holdings will turn into landless agricultural labour working for wages. Again, the moment they are ousted they will pick up weapons of war. Thus, the direct involvement of the rich urban families and corporate entities in farming sector especially in holding lands must be firmly restricted. Recently, a committee of the Union Rural Development Ministry commissioned in January, 2008 has recommended that in rural India, the ceiling should be imposed on irrigated lands above 15- 20 hectares and holdings of

non- irrigated lands should be limited to 10- 15 hectares with retrospective effect.⁴⁰⁹ The report also suggested that a minimum of 10- 15% of land should be provided for the landless and homeless in a time bound manner with the titles of the land being made in the name of the women.

SPECIAL AGRICULTURAL ZONES

Setting up of Special Agricultural Zones is another important tool to achieve the balance among the increasing pressure of population, job creation, meeting the demands of the consumers, industrial houses. The aim of Special Agricultural Zones (SAZs) is to conserve prime farm land for farming and to bring about convergence among all ongoing government programmes, like the Rashtriya Krishi Vikash Yojna, the National Food Security Mission and the National Horticultural mission. It will also focus to build infrastructures like roads, markets and storage facilities in one area and thereby prove farming profitable again. Conservation farming and the care and enhancement of the ecological foundations essential for sustainable agriculture will be bottom line of the SAZ.⁴¹⁰ After famous agricultural scientist and the father of Indian Green Revolution, M. S. Swaminathan, "the aim of the SAZ is to conserve prime farm land for farming and to bring about convergence among all ongoing government programmes."⁴¹¹ At this the Uttarakhand model may be a guide. Again recently, the state of Punjab⁴¹² has started to demand the Union Government to declare the state as the Special Agricultural Zone (SAZ) on the pattern of SEZ with assured free

⁴⁰⁹ Reported in The Times of India: 1st November, 2009 at pg. 10.

⁴¹⁰ The system should be so devised that the farmer's co- operative would help to administer the Special Agricultural Zones (SAZ), with the government acting as facilitator. Together, the state and co- operative would determine what additional facilities are needed like- storage, cold storage, cold chains, fish farming, horticulture and also packaging etc.

⁴¹¹ Reported in The Hindustan Times, Kolkata: 24th March, 2009 pg. 01.

⁴¹² Reported in The Hindu: 31st August, 2009 pg. 03.

power supply to the farm sector, tax free subsidized agro inputs like fertilisers, pesticides, seeds and diesel, assured marketing and export of agro produce at price linked rates besides revitalising its age old canal irrigation system as it contributes nearly 70% of wheat and 40% rice to the national pool.

RETURN OF THE LAND ACQUIRED

A land once acquired for public purpose or for a company under the Land Acquisition Act, 1894 by state cannot be returned to the original owners. In *State of Kerala v. M. Bhaskaran Pillai*⁴¹³ the Supreme Court held that when the land has been acquired for public purpose, sale of unused to the erstwhile owner is improper. Such land should be put to public auction and the amount fetched can be better utilised for the public purpose envisaged in the Directive Principles of State Policy of the Constitution. However, in *Ramniklal N. Bhutta v. State of Maharashtra*⁴¹⁴ the Supreme Court didn't find any fault with the municipal corporation giving up a part of land proposed to be acquired under a private treaty with the persons interested. In absence of the material to show that the purpose stated in the notification was not true or real, the acquisition of the remaining land cannot be struck down on the ground of malafides. But the Land Acquisition Amendment Bill, 2007 is also speaking for the returning of the land to the original owners if the purpose of acquisition is not satisfied. But, the *Land Acquisition Manual*, a delegated legislation of Parliament which has the force of a statute, under section 55, clearly states that any land not required by any company, railway or otherwise, shall be relinquished and returned to the original owners or their heirs.

⁴¹³ AIR 1997 SC 2703; (1997) 5 SCC 432.

⁴¹⁴ AIR 1997 SC 1326; (1996) 1 SCC 134

PROPOSED SCHEME FOR THE CORPORATISATION/ ACQUISITION OF LAND AND DISPLACEMENT

Corporatisation is based on four factors- land, labour, capital and entrepreneurship. Capital gets its reward with dividends and capital appreciation; entrepreneurs get salaries and fat annual bonuses, labour in wages and ESOp (Employees Stock Options) which give them perpetual income. The landowners in most of cases get only one time compensation. It is nothing but merely robbing of the landowners or peasants to satisfy the will of the corporate bodies. The acquisition laws must necessarily ensure that the private owner is suitably compensated. The *just compensation* clause in the Fifth Amendment to the Federal Constitution of the USA says, that *such laws should also ensure that the powers of acquisition can be exercised only when the pain and suffering of a person being deprived of his property is overwhelmingly outweighed by the public good sought to be achieved by the acquisition. Such laws should also ensure that no private owner of property is deprived of his life or livelihood in the process of acquisition if the land in question forms his only source of economic sustenance.* As long as farmers have their sickle, they will be peaceful. But if their sickle is snatched from their hands, it will be replaced by a gun. In West Bengal, 63% of the land is agricultural land, 13% of land is forest land, 23% is used for township and industries while only 1% of the land is the fallow land.⁴¹⁵ Again, the government after duly implementing the ceiling laws distributed the excess land among the landless people intending to do agricultural works in the form of 'patta'. Thus, today, at the instance of industrialisation, acquisition of land is inevitable. A person who is unwilling to part with his land mustn't be evicted at the cost of his livelihood. If he is, there is bound to be

⁴¹⁵ Statement of Mr. Buddhadeb Bhattachariya, the Chief Minister of West Bengal at CPI(M) Party Congress, Coimbatore, 1st April, 2008. Reported in the Ananda Bazar Patrika, 2nd April, 2008.

trouble. Today, the Land Acquisition Act, 1894 provides provision for payment of compensation for the acquisition of land. But, still the land losers, on acquisition, suffer a lot as the scheme of compensation has some drawbacks as under-

1. The relevant state government and the corporate bodies must pay attention to choose uncultivated, barren, lands for the setting up of their projects and the government must facilitate this by providing the necessary infrastructural facilities in those lands. Prime farmland must be conserved for agriculture except under exceptional circumstances, provided that the agencies that are provided with agricultural land for non-agricultural projects should compensate for treatment and full development of equivalent degraded / wastelands elsewhere. The appropriate government acquisitioning land should hand over the land to the corporate bodies only when the entire facilities are ready for the 'would be' displaced people. At this, the decision of creation of land bank by the state as well as, the declaration of rail land bank for laying down the tracks are very welcoming steps taken by the State of West Bengal and the Indian Railways respectively.
2. For non- agricultural purposes, as far as possible, land with low biological potential for farming would be earmarked and allocated. State governments would be advised to earmark lands with low biological potential such as uncultivable land, land affected by salinity, acidity, etc., for non-agricultural development activities, including industrial and construction activities.
3. No ownership of the land to the corporate bodies on acquired land. On acquisition, the land should be transferred the same

land on lease to the relevant corporate bodies/ developers.⁴¹⁶

In addition to this, on sharing land the government should secure a percentage of shares in the relevant industry.

4. While acquiring the land, the states should acquire at least acquire land more than the company requires after scrutinising the company's requirement in details because the construction of the rehabilitation site with all necessary facilities and keeping in mind the area of land required to ensure the continuation of agriculture to the people who do not want to shift to industrial life. If the land acquired for 'public purpose' is not coming up with the proposed project for a long time, the relevant land may be used for agricultural activities by the '*persons interested*' on contract with the respective local bodies for a very short period and the respective local bodies should allot land to them as per the norms set by the West Bengal Land Reforms Act, 1955 on the principles of the distribution of land.
5. The compensation offered is just the current value of the property when the notification is pronounced, but the experience shows that, once the project is set up on the land as acquired, the value of the land so acquired becomes multiple times to the price at which it was acquired. Thus, the framing of separate comprehensive schemes for compensation and resettlement package for the acquisition of land for setting up of the project of corporate bodies for commercial purposes. It may be securing them for the projects of 100 days works in the area or near by and this payment may be made in advance for at least 1 year. While, in Singur Rehabilitation Package, the government announced

⁴¹⁶ Roopam verma & Kanupuriya Bhargava; Land Acquisition for SEZ, Questioning the validity of Government Power to acquire land; 2007 AIHC(All India High Court) Jour./ 11 XI at pg 164.

the payment of 300 days under the NREGS at a time. It should be at least 100% because once such acquisition takes place, the land value goes in multiples. In cases where the non- corporate bodies to use the land for non- commercial purposes like government offices, schools, The amount of solatium should be greater than what ever is suggested under the R& R Bill, 2007. Again, in case of construction or expansion of highways, railways etc. the '*persons interested*' must be provided with land maintaining status quo as much as possible regarding the types of interests they had with the land prior to the acquisition. In addition to these, duly attracting private players to set up the wayside amenities like- *hotels, parking lots, snack bars, restaurants, restrooms for short stays, petrol pumps and kiosks* along the respective stretches and thereby facilitate the landlosers to get engagements and also giving preferences in setting up of godown, cold chains etc.

6. Considering the skewed ownership of land, it is necessary to strengthen implementation of laws relating to land reforms, with particular reference to tenancy laws, land leasing, distribution of ceiling surplus land and wasteland, providing adequate access to common property and wasteland resources and the consolidation of holdings.
7. The present practice of paying a lump sum amount for the land purchased or acquired, the livelihood of the people, basically, who are illiterate, ignorant and dependent on that very land is taken away which is not safe and unjustified, as they mostly do not know the proper use of this sum of money and hence, there lies sheer possibility of misusing the sum received in the way of paying compensation which in many cases causes the distress in future. At this, to ensure the livelihood security of such people, the government should

take steps. Some of the corporate bodies prefer the allotment of share of the relevant company in terms of the compensation to be paid to the displaced. But there is sheer possibility of incurring loss of the investors in the stock as it fluctuates with the Stock markets which a farmer can not bear with. At this, on creation of a separate fund, if the government regulates the same at the interest of the landlosers and a monthly benefit is given to them in the way of starting of pension on retirement from agricultural works, this can be a good option in this regard.⁴¹⁷ Thus the issue of income and livelihood security should be maintained in the way as under-

- a.** A certain portion of the compensation money (1/3; 2/3, 1/2; 3/4)th on the basis of the agreement on due consultation with the displaced people) of the whole amount should be deposited with a financial institution (may be the Central Relief and Rehabilitation Fund or any special fund created for the purpose of rehabilitation of the displace persons) to be monitored by the renowned fund managers to get the maximum gain from which the Project Affected People (PAPs) will get monthly benefit.
- b.** The rest of the sum should instantly be given on acquisition of land so that they may grow the profession of their choice may be agriculture or any other profession of their choice.
- c.** The very fund again should include- **(i)** a certain percentage of yearly profit where the practice of Jharkhand⁴¹⁸ may be a model; **(ii)** the interest on the

⁴¹⁷ Pranab Bardhan, The Ananda Bazar Patrika; 17th March, 2009 at pg. 04.

⁴¹⁸ Jharkhand has secured the sharing of 1% of profit of the project among the land loosers to project: Published on 2nd august, 2008; Ananda Bazar Patrika at pg. 9.

debentures, if allotted on purchase or acquisition on the difference money i.e. the price at which the land was acquired and the price of the land after the corporate body starts operation. **(iii)** the amount charged in terms of additional duty/ tax for such enhanced value, at least at the time of the subsequent transfers of land and sums so collected should be transferred to the said fund to enhance the amount. **(iv)** the allotment of company's share like the Salboni Model, has been put alternative to the allotment of debentures to that fund to give momentum to the monthly benefit. At this, on creation of a separate fund, if the government regulates the same at the interest of the land losers may be a good option in this regard.⁴¹⁹ At this, the government is to manage the risk of stock market while the land losers will remain sustained livelihood. Again, all the people of whatever age should be covered under the scheme. It will allow the land losers to have a sustained livelihood.

- d.** If the very corporate body is not appointing the local people, then there should not be any relaxation of tax. Again, the difference money in terms of tax, in case of not non appointment of local people and the tax amount relaxed should go to the said fund from which the landlosers will get monthly relief.
- e.** Experience shows in many cases that once people get money of big amount, out of selling the land, they spend most of their money over liquor and die as cycle rickshaw puller or even beggar. A well organised consultancy and training programme should be organised by the government may be arranged to

⁴¹⁹ Pranab Bardhan, The Ananda Bazar Patrika; 17th March, 2009 at pg. 04.

secure proper utilisation of the fund so realised by the victims.

f. Further, the very corporate body should compulsorily be involved in various social infrastructural development activities in the areas nearby.

8. The Act doesn't provide the replacement value including the cost of shifting to the persons interested. The scheme of compensation generally offered, doesn't contain the proper replacement value of the property e.g. a person was having a running grocery in the area he is not provided with a grocery where the displaced people start dwelling on displacement. Again neither the Land Acquisition (Amendment) Bill, 2007; the National Resettlement & Rehabilitation Bill, 2007 nor the National Resettlement Policy, 2007 do not prescribe such benefits. In this regard the following may be submitted-

- i.* The data of entire lands in the state regarding the nature of the land to be prepared with utmost priority;
- ii.* The annual earning of the cultivators of those land;
- iii.* Preparation of land map with their characters and constituting of land bank for the state. At this, Tamil Nadu, model may be a guide. Recently, following the same the Haryana State Industrial and Infrastructure Development Corporation (HSIIDC) has drawn up a plan for crating a land bank of about 17,000 acres for setting up new industrial estates and infrastructure projects which include expressways, model industrial townships, clusters and dedicated theme parks etc in the state. Very recently the government of West Bengal has finally decided to buy or acquire land at

strategic allocations with bank loans to create a land bank for industrial projects in the state.⁴²⁰

- iv.** Again, the families whose lands have been acquired should be secured to take the vocational or technical education through the introduction of quota system so that the technical hand, the industries require, can be met up by them.
9. Involvement of Panchayats and the opposition parties in the acquisition process from the fixing of the price of land along with a detailed counselling of the owners regarding the pros and cons of the possible facilities to be rendered in the proposed project which will smoothly build confidence and consensus for the setting up of the project.
10. Under the L.A. Act, 1894, there is no guarantee of job or alternative means of livelihood in the project after starting the operation after duly training the people whose land is so acquired. The corporate body should create job opportunities for the local people. At least one member of the family whose land has been acquired must be provided with job after duly training him in the very project, provided, the very person is lacking the required skill and qualification. This issue though has been discussed into the National Rehabilitation and Replacement Policy, 2007 but with insufficient description of scheme to undertake on this point. It may be so that the relevant acquisitioning body is not in a position of providing job to the affected people due to the some reason. The state government's declaration of relaxing tax norms on the issue of appointing the localites is a welcome move. At this, some relaxation on point of qualification is desirable. Again, the people not being engaged in the establishment should be

⁴²⁰ Reported in The Statesman: 11th December, 2008 at pg. 10.

provided with the commercial site near the project area if they have not shown interests in cultivation.

11. There is no scheme for providing the alternative land of same nature nearby through a preferential treatment in giving 'Patta' to the people near the project area atleast to the people who do not have any other skill or who are not willing to involve themselves into some other works by which they can earn livelihood in alternative means.
12. Presently, the Act the power of execution of acquisition is vested with the Collector of the relevant District. At this, to ease the process of acquisition, a committee may be formed consisting of the local MLA or MLAs, representative or representatives of opposition in the relevant area and such other persons as the Collector deems fit who will monitor the entire acquisition process starting from the fixation of price of the land to be acquired till the entire process of acquisition is complete.
13. The government following the Norway model should enact the CSR⁴²¹ Act to compel the corporate bodies to undertake social activities of various natures. During the corporatisation of land, the very corporate body should atleast maintain the followings-
 - Starting and running of the various socio- economic activities and community development programs.
 - Providing health and medical facilities to the localites as a part of the Corporate Social Responsibility.
 - The very corporate body should pay attention to educate and initiate skill development programs of the children of the Project Affected Peoples (PAPs).

⁴²¹ Corporate Social Responsibility is the continuing commitment by business houses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large.

14. All these activities require utmost transparency of the officials. Finally, I have strong reservation over the issue of transferring the land once acquired by the state for some public purposes if the very project is in the cold storage. Again, the issue of direct purchase of land by the corporate bodies is objectionable as it may cause adverse impact on the people.
15. The state needs to introduce 'Demand oriented courses' in the it is so that he youths get jobs easily or are equipped to start their enterprises. Keeping this in mind the Planning Commission⁴²² has approved the proposal of establishing 50,000 training centres in the remote areas of the country to supply the skilled labourers required for the industries.
16. Following the conferment of land rights to women under the Hindu Succession (Amendment) Act, 2005, the provision of appropriate support services to women farmers has become urgent.
17. Joint *pattas* for both homestead and agricultural land are essential for empowering women to access credit and other services.
18. The system of issuing land pass book may be introduced in which every details of the land including the details of buying and selling of land should be mentioned.
19. The Land Acquisition Act would be reviewed with particular reference to the assessment of compensation. Further, the commitment under the existing re-settlement policy of the Central / State governments would be fulfilled in letter and spirit. In addition to these, the speedy disposal of the claims of the land losers regarding rehabilitation and resettlement.

⁴²² Reported in The Ananda Bazar Patrika: 16th February, 2009 at pg. 03.

The Right to Property actually flowing from Article 300A is a human right.⁴²³ Land is one of the most critical and costly input for the setting up of an industry. The industrialisation agenda thus, needs to be placed in the larger context of overall public welfare. There is a need to have a balance between private profits, personal initiative, on the one hand and the state or central government's largesse, concessions and public good on the other. Unfortunately, this has surfaced at a time when we are moving into the election phase and a large chunk of our political class is going to remain preoccupied with the election. Here, the polity needs competent capacities for honest bargaining at the cost of democratic arrangement. At the same time, the state requires to ensure its policy instruments recharged with their democratic obligations. What we want is a 'complete, transparent and flexible land acquisition policy' which can help both the investor and the land owner. On a case to case basis, a compensation package-land for land, jobs, share of profits or royalty will be mutually advantageous. Further, industry would like to see a political consensus evolve on the land acquisition issue so that irrespective of which party is in power, the projects without a hitch or political vendetta. Through allowing a person to purchase 70% of land through negotiation under the Land Acquisition Amendment Bill, 1894 the government perhaps wishes to privatise the welfare activities which in turn may result into grave injustice. At this juncture, being driven by the profit motive, either they will not take up such activities or such enterprise will be priced so high that the intended beneficiaries (the small and marginal farmers) will be excluded. However, the principle of *minimum displacement, non-displacing alternatives, Social Impact Assessment*, the

⁴²³ Lachhman Singh v. Jagat Ram (2007) 10 SCC 448.

provision for the institution of *Ombudsman* for the redress and grievances and the constitution of the *National Rehabilitation Commission* are some the unique contribution of this bill.