

Corporatisation of land: It's Dimensions and Process under the Different Legal Systems ¹

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I. Introduction:

Corporatisation of land means and includes the transferring of lands to the corporate houses for the purpose of setting up of their projects. The relationship between land and human being is as old as man started living on the earth. The nomadic people did not feel the need of taking land in his control. As man learnt agriculture, and for this land is the utmost necessity, people started to have the land in his control. In this process, stronger persons could bring more land in his control and the weak as the history advanced became landless labourers. Even today the genesis of the structure of power and authority in rural India can be traced to land. Land provides the basic necessities like food, clothing and shelter to men. There is an ever changing relationship between land, power and people. The value of land is ever increasing and requires little renewal and replacement. Due to this basic utility, economists consider land as a special kind of property.

II. Corporatisation of Land--- What it Means and Includes:

The word corporatisation means forming a body of many individuals. The French word '*corporalis*' relates to human body and the Italian word Capo means the head. Literally, the word corporate means an entity which is legally united into one body or more commonly large business groups. The term corporation means, "An entity that has a legal personality, i.e. it is capable of enjoying and being subject to legal rights and duties and possess the capacity of succession"³ or a "body of persons (in case of a corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of its' members."⁴ Corporatisation may also refer to the formation of State Corporation or Private Corporations⁵ through the formation of a government or semi-government body so

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³ Oxford Dictionary of Law; 5th Edition 2002; Oxford University Press at pg. 125

⁴ Halsbury's Laws of England, 4th Edition Vol.9 para.1201, Butterworths Publication London.

⁵ The term Corporation has been defined in the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 as anybody corporate established under the Companies Act, 1956; and includes- (i) a

that it operates on business lines with a mandate to trade profitably and accountability for its financial performance. Often, the latter is preferred to the former.⁶ Corporatisation of land means and includes the transferring of lands to the corporate houses for the purpose of setting up of their projects.

III. Farmer/ People Land Relationship vis-à-vis Corporatisation of Land:

Land⁷ is a key asset throughout the rural world, which provides a primary source of income, food security, cultural identity and shelter. Secure access to land and guaranteed property rights are considered as one of the most important key to improving household livelihoods and achieving sustainable development. It provides a foundation for economic activities and the functioning of market (for example credit) and non- market institutions (for instance local government and social networks) in many countries. In earlier times when industrialisation in England and some other European nations started, the nations weren't answerable to it's citizens for the land to be corporatized because of mainly two reasons- *firstly*, the population was very less, and *secondly*, less responsible to it's citizens or weak democracy. Still, in England itself, there was the happening of **Enclosure Movement**⁸ when the state wanted to

company formed and registered under the Companies Act, 1956 and (ii) a company formed and registered under any law relating to companies formerly in force in any part of India. Section 2 (b); The Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962.

⁶ Edna Carew: The Language of Money; Australia and New Zealand banking Group Limited, 100Queen Street, Melbourne 3000.

⁷ In England, the Section 3 of the General Clauses Act, 1845 defines land as '*massuages; lands, tenements, heriditaments, of any tenure*'. The expression land as discussed in the West Bengal Land Reforms Act, 1955 under section 2(7) land means land of every description and includes tank, tank- fishery, homestead, or land used for the purpose of livestock, breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat, bazaar, ferries, tolls or land having any other sairati interests and other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth; under the definition, the term homestead shall have the same meaning as in the West Bengal Estate Acquisition Act, 1953. After the Land Acquisition Act, 1894, the under Sec. 3(a) land includes benefits to arise out of land and things attached to the earth or permanently fastened to or anything attached to earth. The definition of the term 'land' in the land acquisition Act, 1894 is not exhaustive. The Act lays down that 'expression land includes benefits arising out of land, and things attached to earth or permanently fastened to earth.' After *Government of Bombay v. Isufali Salebhai* (1910) 34 BOM.618, The word 'includes' indicates that restriction intended to lump together in one single term i.e. land- several things of particulars such as soil, building, on it, in charge on it and other interests in it- which all have separate existence capable of being dealt with either in mass or separately, such exigency of each case arising under the Act may require. Thus, it is clear that definition of land will include superstructure, if any, existing upon it. For the purpose of the Act, therefore, land includes buildings, and also trees and standing crops. (*Province of Sind v. Hari Kishan Dass Gulabari* AIR 1940 Sind 58.) This definition is wider than that of immovable property under the Transfer of Property Act, 1882. Significantly, mines and minerals beneath the land are also included in the definition of land under the Land Acquisition Act, 1894. It has also been observed according to the land Acquisition Act, land doesn't merely mean a firm land but also land covered with water and in calculating market value of land, benefits derived from such water should also be taken into account. (*Nalinakshya Bose v. Secretary of State* (1907) 5 CLJ 62 (N)).

⁸ In English social and economic history, enclosure or inclosure is the process which ends traditional rights such as mowing meadows for hay, or grazing livestock on common land formerly held in the open field system. Once

restrict right of people on land at the instance of industrialization. In the course of development virtually everywhere, the need to sustain larger populations or to make use of economic opportunities associated with trade required the investments in land. At this, with increasing population and successively greater investment in land, economic growth and increased welfare, the failure of legal control will necessarily lead to land grabbing, conflict and resource dissipation, in extreme circumstances, can undermine society's productive and economic potential. Property right affects the economic growth in a number of ways like⁹,

- Firstly, Secured property right increases the incentives of households and individuals to invest and often also provides them with better credit access; something that not only helps them make such investments but will also provides an insurance substitute in the event of shock.
- Secondly, in the unmechanised agriculture, the operational distribution of land affects output, implying that a highly unequal land distribution reduces the productivity.
- Thirdly, Secured land tenure also facilitates the transfer of land at low cost through rentals and sales, improving the allocation of land. It also supports the development of financial markets. Without secured rights the land owners are less willing to rent out their land, which may impede their ability and willingness to engage in non-agricultural employment or rural- urban migration.

The issue of Corporatisation of land not only results with the odds. It can also fetch good impacts on farmers only when the relevant land losers are provided with the well planned rehabilitation and replacement package. A study of the history of England of the 17th and 18th centuries and of France of the 18th and 19th centuries show that the transition period

enclosed, these uses of the land become restricted to the owner, and it ceases to be common land. In England and Wales the term is also used for the process that ended the ancient system of arable farming in open fields. Under enclosure, such land is fenced (enclosed) and deeded or entitled to one or more owners. The process of enclosure began to be a widespread feature of the English agricultural landscape during the 16th century. By the 19th century, unenclosed commons had become largely restricted to rough pasture in mountainous areas and to relatively small parts of the lowlands. Throughout the medieval and modern periods, piecemeal enclosure took place in which adjacent strips were fenced off from the common field. This was sometimes undertaken by small landowners, but more often by large landowners and lords of the manor. Significant enclosures (or emparkments) took place to establish deer parks. Some (but not all) of these enclosures took place with local agreement.⁸ In 1607, beginning on May Eve in Haselbech, Northamptonshire and spreading to Warwickshire and Leicestershire throughout May, riots took place as a protest against the enclosure of common land known as The Midland Revolt. The Newton Rebellion (8 June 1607) was one of the last times that the peasantry of England and the gentry were in open armed conflict. Available at <http://en.wikipedia.org/wiki/Enclosure> visited on 12th Jan, 2012 at 5.32 PM.

⁹ Klaus Deininger: Land Policies for Growth and Poverty Reduction; World Bank's Policy Research Report: A co publication of the World Bank and Oxford University Press, First Published in 2003; at pg. 24.

was full of turbulence, revolutions and intellectual ferment. It was only after going through this fire that modern society emerged in Europe. India is presently going through a very painful period. Today all the state governments are inviting the industrialists to set up their projects in their states. At this, the all the state governments are in a race to providing facilities of various types in addition to allotment of lands to attract the investors in their states.

IV. Dimensions of the Corporatisation of Land:

Today, in the world, the acquisition of land goes for the purpose of developmental purposes like the construction of some dams, roads, railway tracks etc. and Corporatisation i.e. for setting up of industrial units and for organized agricultural activities.

Traditional Corporatisation of land: - Corporatisation of land for the setting up of industries is a very common phenomenon in the world. Since the days of setting up of industrial units, this practice started. Earlier, no much problem came up for this, while, today due to huge increase of population a controversy has taken it's birth i.e. whether corporatisation of land is boon or bane. In recent times, this issue has become an issue of great debate and every where in India this conflict is a burning topic of discussion.

Corporatisation of foreign land for organised agricultural activities: - In the age of globalisation, when the concept of free market free economy is the top most priority, in a number of countries, the acquisition of land by big corporate bodies in overseas is a recent phenomenon. Today, with the incessant pressure to feed large populations, rise of food prices and environmental degradation have led private corporations- sometimes backed by governments- in South Korea, China to lease or contract vast tracts of offshore farmland with varying degrees of success while, India is also not far behind the race with people having farming skills. It causes many of the world's food as well as population problems could be solved if they are allowed to cultivate empty land in Africa, Latin America, Canada and Australia. Keeping this thing in mind, many of the countries are easing immigration laws to mechanise this system. A number of corporate bodies having sufficient technologies acquire land in alien countries. Many of the corporate bodies like Reliance, Tata, Emami etc. are already in this field. The recent incident is the acquisition of 1lakh acre of land on lease for Zatropha cultivation by the Emami Biotech in Ethiopia.¹⁰ Again, the Tata group company,

¹⁰ The Ananda Bazar Patrika: 4th Aug, 09 at pg. 03.

Kanan Devan Hill Plantations Pvt. Ltd has taken 200 hectares for tea cultivation in Ethiopia.¹¹

According to the International Food Policy Research Institute, between 37 and 49 million acres in poor countries have been sold or have been under negotiation for foreign purchase since 2006.¹² At this, it is important to note that Sudan has leased 1.5 million hectares of farmland to Saudi Arabia and the Gulf States, Egypt and South Korea for 99 years, Egypt plans to use 8,40,000 hectares in Uganda for wheat and corn and that the Democratic Republic of Congo has offered to lease 10 million hectares to South African farms. Prominent players in the relatively recent business for foreign direct investment in agriculture are the oil- wealthy (but water deficient) Saudi Arabia and the United Arab Emirates, which mopped up some 15- 20 million hectares of cultivable land in Africa and central Europe.¹³ The appetite of the mid- eastern states for the rich soil and water resources of Sudan, Ethiopia and Ukraine to grow wheat, maize and corn is matched by greater recognition in the latter of the overall gains from the adoption of scientific techniques, fertilizers and high- yielding crop varieties. It underscores the looming threat of further marginalisation of farmers in the poor countries like, Sudan, Ethiopia, Azerbaijan, Ukraine etc. recently the Sudan's ambassador to India has said that *only 20% of land resources in his country are being utilised, and the Panjabi farmers could step into to cultivate available land if they wish.*¹⁴ Moreover, the corporate bodies, as against mitigating the hunger of such regions such land leased or sold is used for biofuel crops or foodgrain crops those are directly exported to the leasing countries or to new owners. Again, on Kenya's Yala River, successful farmers are at risk of being driven off their land because the American corporation, Dominion Farms has built a dam upstream which leads local farmers flooding of their crops.

The stepping up of foreign investment needs to be regulated to ensure the food security of the nations entertaining such investments. Among the countries, Azerbaijan¹⁵ is the lone country who has complied with the IFPRI stipulations, 2003. It also requires a code of conduct similar to the Extractive Industries Transparency Initiatives (EITI)¹⁶ in order to

¹¹ The Hindu: 5th Aug, 09; at pg. 13.

¹² The Hindu; 27th August, 2009 at pg. 10.

¹³ The Hindu; 7th May, 2009 at pg. 10.

¹⁴ The Times of India: 1st August, 2009 at pg. 16.

¹⁵ The Hindu; 7th May, 2009 at pg. 10.

¹⁶ The **Extractive Industries Transparency Initiative (EITI)** increases transparency over payments by companies from the oil and mining industries to governments and to government-linked entities, as well as transparency over revenues by those host country governments. It was announced by Tony Blair, the then-

establish norms of public scrutiny for the acquisition of lands by non- nationals, the export of food crops and the right of the local people over it. Again, it also demands the publication of statements on profits they make and the payments of revenues to the government exchequer.

V. Areas of Concern in the Process of Corporatisation of Land:

Today, it has become a vital issue before the nation when land is frequently acquired by the state rampantly from the farmers without considering the nature of land whether the very land is fertile or not. The corporate drive to control land especially the fertile agricultural lands by industry in the name of development is going to lead serious socio- economic crisis in the absence of proper step. Now, let's have a brief study over the various impacts of the corporatisation of land-¹⁷

- Fear for receiving improper compensation against land and delayed payment;
- Forced shifting of livelihood pattern i.e. from farmers to non farmers leading to the absence of –
 - i.* Sustainable income guarantee
 - ii.* Guarantee for the proper utilisation of the sum as compensation
 - iii.* Education of the children and health security
- Job guarantee against the fear of crunching of job opportunities by the outsiders. There is a genuine fear from which the project affected persons are suffering. In acquisition of land, the government prefers the agricultural lands because it causes lesser displacement.
- Fear of loosing shelter or place of residence.
- Fear of loosing balance of food security.

Prime Minister of the United Kingdom, at the World Summit on Sustainable Development in Johannesburg, South Africa in September 2002. Ghana, Nigeria and Azerbaijan piloted the EITI approach. As of June 2011, EITI was implemented in 35 resource rich countries around the world. 29 countries have produced EITI reconciliation reports.

See http://en.wikipedia.org/wiki/Extractive_Industries_Transparency_Initiative

¹⁷ For a detailed analysis see Diganta Biswas, Impacts of land acquisition vis a vis the concept of Land bank: A study on West Bengal, Indian Journal of Law and Justice Vol. 1 No. 1 March 2010 at 79.

- Fear of keeping the land idle after acquisition and there by delaying the enforcement of commitments to the project affected people.
- Another fear that arises on acquisition, is the keeping the land idle.
- Suffering from mental trauma. The continuous strife over land for more than 2 years and finally pulling out of Tata from Singur has laid a very grim impact on the local people.¹⁸
- Improper counseling often leads to the failure of acquisition of land for a project. In such a state of affairs, proper counseling is the only answer.
- Improper rehabilitation and resettlement policy of the government. It requires a sheer necessity of introducing a well planned, comprehensive, and uniform scheme of government for rehabilitation and replacement of the displaced people in the absence of proper legislative framework. 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.
- On corporatisation/ acquisition of land mostly the small farmers either became landless labourers or more dependent of farm work to supplement insufficient income from farming.¹⁹
- It is seen that where land is on the way of acquisition, for setting up of a developmental projects; as soon as the project is declared, the touts or land sharks rush there to maximise their deal with lands. They start purchasing lands in the locality and thus push up the price of such land. They are booking lands luring the local farmers with a negotiated price to sell out them to the industrial houses or businessmen which don't have any link with the price fixed by the government.

¹⁸ As per the survey conducted by the *Life and Livelihood with Human Dignity*, a group of Teachers of the Department of Psychology of the University of Calcutta and the representatives of various NGOs, found that the people in the locality nearby the company establishment. They found, among the people suffering form the land dispute 90.8% are severely traumatised while only 9.2% are moderately traumatised. Many of them even violently arouse if someone utters the word 'nano', some fears, some of the people starts sweating etc. the report again expresses concern that if the same is not properly handled by the government, they may become patients of schizophrenia and even may be incline to commit suicide. (Reported in the Ananda Bazar Patrika: 24th March, 2009 at pg. 11).

¹⁹ The landless labourers are pushed further to the brink of precarious survival their income fell sharply and they became more uncertain as both farm labour demand and wage rates were squeezed in the areas in the vicinity of submergence. Again, economic hardship deepened as almost all families were forced to sell all or part of their livestock when common grazing land was no longer available. Children were withdrawn from schools. Health problems increase. With earning opportunities shrinking locally, seasonal migration became common and some families contemplate longer term migration.

Consequently, people prefer to sell their land to such touts instead of government. Thus, a conflict arises between the land owners and the government.

- When a project work after acquisition of land starts, many people start working in the project. The local people also start depending on the project. Hence, the after effect of the pulling out of project is very important to study. The farmers given land, land owners and traders are in great frustration because they e.g constructing hotels, shops etc with a hope to do business in future on the opening up of the factory are in great despair. In addition to this, the local people associated with the construction work face huge loose.

In addition to these, the followings consequences may arise in the absence or lack of developing proper legal mechanisms when an MNC having host country in some other country-

- The corporate bodies involved in the current rush for agricultural land in alien countries, if we look at, are among the world's weak governance zones where the corruption, mis- governance, failure to implement land reform and improve agriculture and jeopardising the prospects for sustainable growth. One of the worst examples to this situation is Communist Vietnam.²⁰ Moreover, often only the head of the state knows the actual extent.
- They drive out thousands of people from their land but provided jobs as less as possible to the local people and the farmers are typically compensated in the absence of proper rehabilitation and replacement policy of the government.

VI. Legal Framework for the Corporatisation of 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

²⁰ Here from the time of the end of the war in 1975 to 2009 licenses for new golf courses were issued at an average of one in a week has resulted the rise of golf courses from 2 to a total of more than 140 projects around the country²⁰ and thousands of farmers displaced from their lands and devouring the rice fields, the country depends on. The Dai Lai golf course in Vinh Phuc province drove thousands of people from their land but provided jobs for only 30 local people while the farmers were typically compensated at a rate of \$2 to \$3 a square meter, which is about the cost of a sack of rice. Report of the Vietnam News Service. Quoted by Seth Mydans, A harvest of Golf courses from Vietnam's farmland: The Hindu: 21st Oct, 2009 at pg. 11.

principles that could be adhered to in a resettlement programme, regardless of project locations.

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. 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.²¹ 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.²²

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 Resettlement and Rehabilitation of the project affected families. In current jargon, this practice is known as ‘financing for development’.

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,²³ 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

²¹ Section 4(24), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

²² Section 4(27), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997

²³ Madan Ghosh, Reported in the Ganashakti: 27th December, 2008 at pg. 04.

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, 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.

VII. Problems in the Existing Legal Framework of Land Acquisition for Corporate Purposes in India:

In India, The Land Acquisition Act, 1894 provides provision for payment of compensation for the acquisition of land. Under the Act, following kinds of acquisitions are covered-

- For public purpose (Sec. 6)

- For industrial concern not being a company²⁴ (Sec. 38A)
- For companies for the erection of dwelling houses etc. for workmen [Sec. 40(1) (a)]
- For companies engaged in work for public purpose [Sec. 40(1) (aa)]
- For companies for some work likely to prove useful for public [Sec. 40(1) (b)]
- For public purpose primarily and on behalf of a company (Sec. 6 & 40)
- for railway or other companies with which the appropriate government is bound by agreement to provide land (Sec. 43)

But, unfortunately, still the land losers, on acquisition, suffer a lot as the scheme of compensation has a number of drawbacks. The contentious issue of land acquisition for industry cannot be resolved justly without a “precautionary principle” approach that respects livelihood rights.²⁵ The problem in the Act of 1894, mainly are 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.
2. 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.
3. 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 in several states and the Indian Railways is welcome.
4. 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/

²⁴ According to clause (e) of Section 3 of the Act, the expression ‘company’ means-

- (i) a company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc) of Section 3 of the Land Acquisition Act;
- (ii) a society registered under the Societies Registration Act, 1869 or under any corresponding law for the time being in force in any state, other than a society referred to in clause (cc) of the Act;
- (iii) a co- operative society within the meaning of any law relating to co- operative societies for the time being in force in any state, other than a co- operative society referred to in clause (cc) of the Act.

²⁵ Praful Bidwai, Zones for scam, available at <http://www.tni.org/article/zones-scam> visited on 4th September, 2012 at 5.33 PM

developers.²⁶ In addition to this, on sharing land the government should secure a percentage of shares in the relevant industry.

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. In this regard, the recent GoM decision for the approval of the new Mining Draft Bill containing 26% share in profits with the local people affected by projects is a very welcome move.²⁷
6. 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 justified. Hence, the creation and regulation of a separate fund by the government is necessary in 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.²⁸
7. There is no scope of the involvement of Panchayats, local MLA, leaders of 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 under the present legislation which definitely is expected to smoothly build confidence and consensus for the setting up of the project.
8. Under the present legislation, there is no obligation/ compulsion for creation of jobs for the project affected people. In this context the respective body acquiring/ using land should have the responsibility by law to create job opportunities and make the local people employable²⁹ after duly training him in the very project, provided, the very person is lacking the required skill and qualification.
9. 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

²⁶ 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.

²⁷ The Hindu: 18th September, 2010 at 12.

²⁸ Pranab Bardhan, The Ananda Bazar Patrika; 17th March, 2009 at pg. 04.

²⁹ 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.

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.

10. All these activities require utmost transparency of the officials and there should be the speedy disposal of the claims of the land losers regarding rehabilitation and resettlement.

Land Acquisition Amendment Bill, 2007: Under the Land Acquisition Amendment Bill, 2007 provides, ‘any other purpose useful to the general public for which 70% of the land has been purchased by a person through negotiation, but the remaining 30% is yet to be acquired’ is a dangerous provision because the expression ‘a person’ includes “any company or association or body of individuals whether incorporated or not” and being empowered by this provision, *any realtor, speculator, private companies or by land mafia gang* under the cover of a respectable name. They may invest capital in purchasing land in the name of setting up of the unit but prior to the lapse of time they may sell out the same and earn huge profit out of the same by artificially increasing the price of the very land as when an industry is proposed to set up its unit then the price of the land goes up at a rocketing pace. No provision is there, as yet to stop this.³⁰

- At the same time, the state will loose control to secure agricultural lands and hence the food security of the state will be at stake and everything will go silently. The state must not allow such initiative to come into force.
- The government has declared reservation of 10% of the seats for at least one of the members of the land loosing families for projects. In this regard recently, the Bengal Aerotropolis Projects limited (BAPL) has an agreement with the West Bengal Technical Department under which the 5000 family members (one from each family) of land loosing families will be trained.³¹

The Land Acquisition Amendment Bill, 2007 being found faulty and more importantly, at the cost of commitment of coalition politics it had been returned back for the removal of the fallacies and hence the same came as Draft National Land Acquisition and Rehabilitation & Resettlement Bill, 2011.

Draft National Land Acquisition and Rehabilitation & Resettlement Bill, 2011: In recent times, the Draft National Land Acquisition and Rehabilitation & Resettlement Bill,

³⁰ D. Bandyopadhyay: The Corporatised State- 1: Published in The Statesman: 4th August, 2009 at pg. 06.

³¹ Reported in The Ananda Bazar Patrika: 1st August, 2009 at pg. 03.

2011³² has put priority of the state to use land for agriculture purposes than for industrialization and urbanization. The preamble also claims that the draft bill aims to mitigate the adverse impacts on habitats and is sensitive to the natural resource base. It also speaks about ensuring a humane, participatory, informed, consultative and transparent process of land acquisition and the realization of a stage in which the affected persons become partners in development. Initially, the draft policy did not envisage acquiring any irrigated multi-crop land at any circumstances by Government. Further, the new draft is saying it seeks 80% consent of the project affected before acquisition, provision of resettlement and rehabilitation to the direct and indirect evictees with several benefits, twice and six times the market price/ stamped value respectively in urban and rural areas and special allowances for the Scheduled Tribes. But, unfortunately, the draft bill is yet to achieve the ideal balance between the need for *ecological or food security* and the need for *industrialization*. The draft bill inter alia has the following shortfalls-

- Under the present bill, such consent is required only for those acquisitions where land is being acquired for private companies for immediate use or end use. How the consent of the people is gained by the private firms in such cases is highly debatable. Also it conveniently forgets the sub-transactions that may happen in the locale in connection with the development project that is coming in, the consequent rocketing of prices and the resultant land inequality that may ensue in the area. Further, there is a possibility of using force by the private firms to have land by any means (e.g. the Vedic Village case in Kolkata); they being coerced into selling their land out of want or ignorance (e.g. people were persuaded/coerced to sell out their land to a section of people in Bangalore prior to the notification of acquisition of land by the state where today the Bangalore International Airport is situated at present)
- Though the Bill also spoke for '*the issue of who acquires land is less important than the process of land acquisition, compensation for land acquired and the R&R process, package and conditions*', the consent of the project affected families doesn't count when Government acquires land for its own use, hold and control. Further, this doesn't address the issue of false reports on the use of land which is often concocted by the concerned departments for justifying the acquisition of land.

³² See Chitra.K.P, A Critique Of Land Acquisition Bill 2011, <http://www.countercurrents.org/chitra300811.htm> visited on 4th september, 2012 at 8.46 AM

- The Draft Bill specifically mentioned in the note that the private companies can directly buy land from farmers and others. R&R package is offered to the people whose lands are bought by the private firms with the partial support of the state or if hundred or more acres are acquired. But the package is not mandatory in those cases where land is directly purchased by private firms and if the extent of land fall below 100 acres.
- The Bill also provided specific plan for the acquisition of Tribal land. However, the ceiling of 100 families for the preparation of a Tribal Displacement Plan is again questionable since it may negatively affect those families in cases of small scale evictions, additional acquisitions or acquisition by multiple agencies. Further it is not politically right to treat the tribal community in par with the general community since the population sizes of both groups are not at all comparable.
- The draft Bill is silent about the followings-
 - i.* A situation in which less than 100 acres is purchased by a private firm, but which may affect more than 100 families;
 - ii.* If the land which is being sold have ecological and productive use for the society;
 - iii.* Monitoring the whole aspects;

At this, Industry groups had slammed the new Land Acquisition, Rehabilitation and Resettlement Bill (LARR) 2011, considered it as "burdensome" and "anti-development".³³ Hence, to bring the right balance the Ministry of Rural Development, Govt. of India incorporated the following changes into the drafted bill.³⁴

- There has been relaxation of the rehabilitation and resettlement provisions which make the annuity entitlement an alternative to providing employment or offering Rs 5 lakh per family. The provision of annuity of Rs 2,000 per month per family for 20 years was earlier a mandatory clause, along with provision of employment for one person per affected family.
- Now, in every transfer of land which is developed or on which development has not taken place 20% of the appreciated value will have to be shared with the original owner.
- The controversial blanket ban on acquisition of multi cropped irrigated land has also been relaxed by the cabinet to allow acquisition of up to 5% such land in a district as a

³³See http://articles.economictimes.indiatimes.com/2011-09-08/news/30130513_1_land-acquisition-resettlement-bill-rehabilitation-and-resettlement, visited on 5th September, 2012 at 5.32 PM

³⁴id.

"last resort", with the rider that an equal area of wasteland within the district will have to be developed.

- The bill does not specify the role of state and the private sector in land acquisition and has given states the freedom to formulate their own land acquisition laws within the framework of the central legislation.
- The central legislation will set up the minimum limit for compensation. The provisions will be applicable to private purchase of land of over 100 acres in rural areas and 50 acres in urban areas.
- The bill proposes to allow the government to acquire land for projects implemented by private companies and projects coming up under public-private partnership route provided these are for the production of public goods and services.

Still, the Union Commerce & Industry Minister Anand Sharma says proposal to ban land acquisition by states for setting up manufacturing, industry and PPP projects will stop industrialization as he wanted land buys for special economic zones and national manufacturing investment zones to be categorized as public purpose, inviting less stringent provisions.³⁵ He further commented that standing committee's suggestions will dampen investment, hit investor sentiment.³⁶ As such, the Prime Minister Manmohan Singh has deferred the issue to a Group of Ministers (GoM).³⁷

Mines and Minerals (Development and Regulation) Amendment Act, 2011: The Union Cabinet cleared the proposed draft bill on 1st Oct 2011. Under the Bill, 2011 the coal companies to share 26% profit, payable to the District Mineral Foundation for the improvement of the life of the land losers.³⁸ **Further,** Under pressure to step up production, Coal India Ltd (CIL) has sweetened its offers for land acquisition. Now, in addition to price of land, the Indian miner will now offer Rs 5 lakh an acre to farmers as “compensation” to loss of livelihood with options of annuity income. Previously the coal major used to offer

³⁵ http://articles.economicstimes.indiatimes.com/2012-08-20/news/33287773_1_land-acquisition-bill-relief-and-rehabilitation-bill-land-intensive-development

³⁶ See <http://timesofindia.indiatimes.com/Land-Bill/speednewsbytopic/keyid-87979.cms> visited on 5th September, 2012 at 5.34 PM

³⁷ See <http://www.indianexpress.com/news/land-acquisition-bill-sees-opposition-sent-to-gom/994478/> visited on 5th September, 2012 at 6.34 PM

³⁸ Available at mines.nic.in/index.aspx?level=1&lid=80&lang=1 visited on 5th September, 2012 at 6.44 PM.

price for land and one job for land holding in excess of two acres. The compensation, however, will not be available if the land loser opts for employment in CIL.³⁹

However, I would like to submit strong reservation over the issue of direct purchase of land by the corporate bodies is objectionable as it may cause adverse impact on the people. Again, the issue of transferring the land to the original owners (The Supreme Court in *Jagram v. Union of India*⁴⁰ has held that in the absence of any scheme for the allotment of alternative sites to the person displaced from their holdings, the landowner cannot claim allotment of alternative land in lieu of the acquired land.) or selling the same to through auction once acquired by the state for some public purposes if the very project is in the cold storage should be stopped.

DOCTRINE OF PUBLIC PURPOSE, CORPORATIZATION OF LAND AND THE ROLE OF GOVERNMENT: Land acquisition was really a sensitive issue across the world. Presently, the Land Acquisition Act, 1894 empowers the state to acquire land for public purpose as well as for a company rather corporatization of land by government through government interference. The Supreme Court in *Jage Ram vs the State of Haryana*,⁴¹ stated "there is no denying the fact that industrialisation of an area is in public interest and starting of new industry is in public interest. In *Sooraram Pratap Reddy & Ors. V. District Collector, Ranga Reddy Distt. & Ors.*⁴² Mr. Justice Thakkar commented, "*if the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the state and the public at large it will serve public purpose.*" Interestingly, the recent 2011 Bill do not permit acquisition of land for companies but the government may acquire land for private companies only when private companies acquire at least 80% of the land requirements through direct purchase, then only the Government will acquire the remaining 20% area. The price of the land will be in the open market and if the landowners are organized, courageous, cautious and confident regarding the price they stand to gain. But, according to **Prof. Amartya Sen**, land acquisition should be the last weapon and the same should be very sparingly used by the state for

³⁹Pratim Ranjan Bose, Coal India sweetens terms for land acquisition, available at <http://www.thehindubusinessline.com/companies/article3013160.ece>, visited on 5th September, 2012 at 6.30 PM.

⁴⁰ 1996 Supp (4) SCC 615.

⁴¹ 1971 AIR 1033, 1971 SCR (3) 871.

⁴² 2008(9) SCC552.

corporate bodies.⁴³ However, another Noble laureate Prof. **Joseph Stiglitz** favoured the role of state in the acquisition of land even for the corporate bodies. "For those who want to acquire large tracts of land from fragmented ownership holdings, it is really a problem and land purchase becomes difficult."⁴⁴ Hence, under the two line of thought provoking statements of two great thinkers of the world of present time, and studying the experiences of day today happenings in the state of West Bengal, where big industrial houses like *L& T's dropping of thermal power project for Bengal; NTPC's request to the state government for arranging land for their project on failure to purchase land directly from the owners of land, stoppage of the broadening of several National Highways projects in the state*, etc. it may be pointed out that the observation of Prof. . **Joseph Stiglitz** is having greater significance in the context of states like West Bengal to smoothen the task of industrialisation and creation of job opportunities for the people. Further, it may be submitted that if land is allowed to be purchase by private companies, land holders may neither get the correct price nor be rehabilitated. Minimizing the scope of acquisition of land by government may lead to the following situations-

- In states like West Bengal, the land is highly fragmented and most of the land is cultivable. Due to the land reform, in West Bengal land is not only in the control of the owners but other interest groups like bargadars.
- The importance of the government's intervention in land acquisition is for the sake of industrialisation. If the government doesn't go for land acquisition, the farmers themselves would do the same, and in most haphazard manner as possible⁴⁵ and as the farming class of people doesn't have the necessary bargaining power, they will not be able to evaluate the potentiality of the land which indirectly will affect the interests of

⁴³ Nobel laureate Amartya Sen spoke to Sambit Saha of The Telegraph; on 23 Jul 2007- "The basic idea of industrial development is right, and in that respect, Buddhadeb Bhattacharjee's basic policy was correct," he also said. "And yet there were two major lacunae in the governmental implementation of the industrialisation strategy. One was in treating land acquisition as the first resort rather than as the last resort, and the other in not having adequate public discussion with other parties to arrive at some agreed conclusions," he added. Available at www.telegraphindia.com/1070723/asp/nation/story_8094453.asp visited on 14th July, 2012 at 5.32 PM.

⁴⁴ Noble laureate Prof. Joseph Stiglitz said on the sidelines of a seminar at the Indian Statistical Institute (ISI), Kolkata. Citing the instance of Columbia University in the US, where he is a professor, Stiglitz said that a huge amount of land was needed for expansion of the 'varsity. He said that the university was unable to acquire land on its own and the expansion process was halted. Ultimately, the local city government intervened arguing that it was in the interest of the people that the university expanded. "Only then that the land acquisition process became a success," he said. Available at <http://www.financialexpress.com/news/joseph-stiglitz-for-govt-role-in-land-acquisition/898560/1> visited on 14th July, 2012 at 5.32 PM.

⁴⁵ Surajit C Mukhopadhyay, *The Study- The Politics of Land Acquisition in West Bengal*; The Centre for Studies in Social Science, Calcutta. Reported in The Times of India: 20th April, 2007 at pg. 04.

them. It may also happen that in the prospective area another competitive industrial body may purchase the land in some other name to halt the project.

- If the industrial bodies and investors directly deal with private land owners, they have to deal with the issue of transfer of title of small parcels of land with dozens, sometimes even over hundred owners which will give birth to many of problems.
- Government's intervention is needed for better package of rehabilitation and replacement for not only owners but also for the other interest groups like, bargadars, agricultural workers in the very land or in a word '*persons interested*'⁴⁶ who are also displaced and basically are illiterate, have less bargaining capacity and hence vulnerable.
- The government's involvement ensures some concrete rehabilitation plan with enhanced price land and an emphasis on alternative livelihood security for non-owners and unrecorded sharecroppers and the persons interested with land.
- In the absence of state in land dealing a land broking class will take birth which will deprive the original landowners from his legitimate dues and the government will fail to act as the regulator to protect the small and marginal farming class.
- It is true that if the state doesn't acquire land obviously the government can escape much controversy and at the same time will lose the control over land. This may lead to leaving the lands idle, without using the same for years as they will enjoy the ownership over the land they directly purchased from the owners of the land. Presently, the land acquired by the government if allotted to a corporate body is left without working for a certain period the said land may be taken back by the state. Though the Proposed Amendment Bill the Land Acquisition Act, 1894 is also provides the provision containing a land acquired for a purpose remains unutilised for

⁴⁶ *Persons interested*:- [Sec.3(b)]- The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land or cultivates the land or any portion of it as a '*bargadar*' and after it.

Explanation: A bargadar is a person who, under the system is generally known as '*adhi*', '*barga*', or '*bhag*' cultivates the land of another person on condition of delivering a share of the produce of such land to that person.

A 'person interested' may be categorised as- Purchaser before the vesting of land in the state under the Land Acquisition Act if person interested; Beneficiary of acquisition, if person interested; Government company, if person interested to challenge the award; Owner; Government, if person interested; Limited interest of Hindu widow; Reversioners; Shebait of deity; Trustees and beneficiaries; Mortgagor and mortgagee; Attaching creditor; Intending purchaser; Lessee; Lessee holding over, a person interested; Tenant; Statutory tenant; Persons acquiring interest by long user; Tenants- at- will

a specified time, would revert to Government, still there is possibility of misusing the land by the very corporate bodies.

- Recently, some state governments e.g in West Bengal through the land and land reform department is preparing '*land use map*' with all details including water bodies, mono- crop land, double crop land, irrigated land, forest covers and the national and state highways as well as waste land for industry of each mouza, each block in a district.⁴⁷ Further, the state of west Bengal has decided not to further acquire land for corporate bodies, acquisition of fertile land and acquisition of land without the consent of the owner of land.
- The corporate bodies may not show their interest to set up their units if there is no control of government in the process of acquisition of land, as under the system the corporate bodies will have to spend more for directly purchasing land from the owners of land. In recent times, the cancellation of L&T thermal power project in West Bengal.
- If the private corporate bodies acquire land for their own interests directly from the owners of the land there will be absolute possibility of a well organized land broking system sponsored by the corporate bodies.

VIII. Conclusion and Suggestion:

Considering the above propositions, it is submitted that by allowing the corporate bodies to enjoy the ownership over the land for setting up of their units will be unwise. It is further submitted that the government should allot land for industrial houses on lease for a period of time as they think fit and through this. In this connection Japanese land– leasing experiments for building the *Jintsu- Gawa* dams and the strategy for building the *Numata* dam may be helpful to manage the tension and conflict. Again, the government following the Norway model may enact the CSR⁴⁸ Act to compel the corporate bodies to undertake social and welfare activities of various nature.⁴⁹ It may secure a certain percentage of share in the proposed company which will allow the state to earn revenue for the government exchequer

⁴⁷ Reported in The Statesman: 11th Aug, 2009 at pg. 04.

⁴⁸ 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.

⁴⁹ For example, *starting and running of the various socio- economic activities and community development programs; driving various educational and skill development programs to the localities as per the demands or requirements of the Project Affected Peoples (PAPs); providing health and medical facilities to the localities etc.*

which at the same time will allow the government to find the means of supporting the displaced people at least for one generation because the displacement leads to huge loss to the oustees and the respective corporate body may be compelled to undertake community development programmes in the adjoining areas and thus, play a role as referee to balance the differences in economic and political power between a massive corporate entity and a small farmer. The Union Government after thoroughly studying the soil map; nature of demography and other important issues of the whole country should specify as agricultural zone and the industrial corridor. Simultaneously, the Central Government should develop the necessary physical infrastructure of the area to suit the requirement of the area; facilitate credit, and distribute income and resources among the states in a way so that an overall equitable balance between the industry and agriculture is achieved and the country prospers with plenty of foods as well as secondary and tertiary sector also rises to fullest extent.