Degrading Land Resources: A Conceptual Introduction

In India, 0.5 to one percent of the country’s area is turning into wasteland every year. It is alarming to learn that out of the land mass of 329 mha in India, as much as 175 mha are now considered degraded in one form or the other. In determining whether the land is a waste or arable land, it is the nature of land and its substantive use that must be taken into account and not what is formally recorded in archaic revenue records.¹

According to National Wasteland Development Board (NWDB) Wasteland means degraded lands which can be brought under vegetative cover, with reasonable effort and which is currently lying as unutilized and land which is deteriorating for lack of appropriate water and soil management or on account of natural causes.

A workable definition of land degradation can be “the reduction or complete loss of natural capacity to produce healthy nutritious crops resulting from erosion loss of nutrient rich surface soil, leeching nutrient, reduced water retention, surface ceiling, land pan formation and accumulation of toxicant chemicals etc.”² Before going further on the legal nuances principles and policies that are integral to sound land management in India it is useful to understand in some detail as to how land may be defined legally and what are the various types of land in the country.

¹ It is its unfitness for use and not the mere fact that it is not put to any present use that must determine whether the land is waste or not.
LAND AND LAND TYPES IN INDIA

The expression "land tenures" has special significance in the history of India. In modern Indian history it referred to various types of holdings of land, involving the King or the Government, the zamindar, the inamdar and various other types of holders, lessors, sub-lessors, lessees and sub-lessees under or through them and evolved at various stages of Indian history by various rulers, nawabs and chieftains Hindu, Muslim and British-differently in different parts of the country.

If one is to look for a legal definition of what is meant by ‘land’ under the central laws The Land Acquisition Act, 1894 can be a place to start. The definition of term land in the Land Acquisition Act 1894 is not exhaustive. The Act lays down that “expression of land includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth”. 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. Significantly mines and minerals beneath the land are also included in the definition of land under the Land Acquisition Act. It has also been observed according to the Land Acquisition Act land does not merely mean a firm land but also land covered with water and in calculating market value of land, benefit derived from such water should also be taken into account.

A brief review of the various categories of land is presented below

**Forest Land:** The land notified by government orders as Reserved Forest (R.F), Protected Forest (P.F), and Private Protected Forest (P.P.F) is recorded in the village land records as separate category. This land is generally governed by Forest Acts (Central and State). In some areas, village forests come under the

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3 This Section draws upon an earlier work of the Author as published in 2002. See Handbook of Environment Law: Land Energy and Environment Protection Laws, Lexisnexis Butterworths.

4 The definition of the land is wider than that of immovable property under the Transfer of Property Act 1882.

5 It has been observed in Province of Sind V. Hari Kishan Dass Gulabari, AIR 1940. Sind 58.

6 Nalinakshya Bose v. Secretary of State (1907) 5 CLJ 62(N).
Revenue Department and are managed by the village level bodies as per prescriptions of the State Acts, Rules and customary laws.

**Pastural Land:** This is a land marked for the purpose of animal grazing and fodder growing in every village. This is also recorded as a separate category in village records. This type of land is known with its local names like ‘Gochar land’, ‘Gairan’, ‘Charagah’ etc. in different areas. This type of land is managed and looked after by village Panchayats.

**Rivers, Nallas, Tanks, Creeks, Ravines etc:** The land which cannot be used for agricultural purpose because of its very nature, therefore, is not assessed for revenue purpose. This land is also not surveyed and measured and hence not form a part of the record of rights.

**Fallow Land:** Fallow land is the land which is cultivable but for various reasons is not cultivated regularly, and thus not assessed for revenue on a regular basis. Fallow land is generally divided into two categories – (i) Permanent fallow (ii) Current fallow.

Permanent Fallow: This is the land which is cultivable, but is not used for taking crops for a longer period and thus not assessed for revenue.

Current Fallow: This is the land which is cultivable, but in a particular year not used to take crops, hence not assessed for that particular year.

**Land not Available for Cultivation:** This is the land which may be cultivable but since it is marked for specific non-agricultural purposes like schools, market place, roads, play ground, jungle jhari, graveyard, etc. is not available for agricultural. To ensure timely recovery of non-agricultural assessments these lands are also separately accounted for in the village records.

**Non Cultivable Waste Land:** The land which is not fit for cultivation and thus not assessed for revenue purpose is called as non-cultivable wasteland. Generally, it is referred to as ‘Wasteland’ or ‘Banjar’. These lands are rent free and are available for use of the community.
**Alluvial, Diluvial Land:** The land which is found adjacent to the river course and made up from the changing course of the river, is known as alluvial land. This land is not recorded in the name of individuals or village. It is under the purview of the Collector who can dispose off the land.

**Homestead Land:** This is a land marked for residential purpose in every village and recorded as separate category in village land records. The village land records in their village abstract do contain the quantity of land in a village under this category but they do not provide the details about individual’s claims.

**Cultivable Land:** This land is owned by individuals, joint family members, companies, cooperative societies etc. and is recorded in their names in the village register. During the course of survey and settlement of the village lands, the lands found cultivable are assessed and classified as such in the village records. There also exist some patches of lands, which are cultivable but not occupied or owned by any persons. Such lands are classified in the village records as assessed waste lands. Such assessed waste lands are accounted separately.

**Need for Secure Land Tenures**

For a sound land management system tenurial problems need to be properly addressed and land ownership rights precisely ascertained. Studies in the past have repeatedly shown that the conditions of insecure land tenure deter the poor from long term investment on their land resources. Security of land tenures is dependent upon a very sound base of land records. Any doubt in the minds of the local inhabitants about their land rights or the recording of these rights would obviously inhibit them from investing their labour and meager capital resources on their lands. The problem of recording of land rights is particularly acute in areas of share cropping and shifting cultivation where identification of individuals with particular plots has been weak.
RIGHTS AND RESOURCE TENURES: A SURVEY OF CRITICAL CONCERNS

Individual and Group/Community Rights and its relevance for Natural Resource Management

The above paragraph suggests that there have been problems in recording of land rights. However, conceptually speaking, there are some fundamental aspects of rights that need to be understood especially in the context of its use for protection of environment and natural resource management. The human rights regime in India – and this regime is increasingly being used in environmental discourse in the country - tends to be grounded mostly on fundamental rights. Thus, for example, the right to environment in India is part of fundamental right to life and personal liberty available to every person in the country. In the various public interest litigation on environmental matters this right has been consistently deployed by lawyers to serve as a basic ground for their legal case. While interpreting and using this fundamental right, amongst other rights, under the Constitution of India in specific contexts and cases the Higher Courts in a series of significant Public Interest Environment Litigation have profoundly contributed to the shaping of environment law and Jurisprudence of India. There has been an array of public interest litigations - with legal grounds being provided by the fundamental right to environment - raising environmental issues including on water and air pollution, river pollution and management, Noise Pollution, Management and regulation of Hazardous wastes, regulation of Mining and Conservation of forest and Wildlife resources.

In addition to the above it also needs to be appreciated that fundamental rights under the Constitution are rights to individuals and not to a group. It is worth bearing in mind that one must not overestimate ‘the significance of the language
and the law that emphasizes the vindication of individual rights \(^7\). In the context of the fact that the recent initiatives of the government in the ‘water and the forest sector’- whether under Rural Water Supply Scheme, Participatory Irrigation Management, Joint Forest Management or Watershed Development - have all sought to vest powers to village groups and associations, this becomes an important point. Thus it is imperative that the resource rights regime needs to evolve conditions under which a group and not an individual can become a right holder so that an entity like a legally constituted Water Users Association or a Joint Forest Management Committee at the local community level can exercise such a right to its advantage.

In the context of growing decentralized environmental governance in India and the need for rights being required to be vested with Group entities, it is only fair to raise the question: Can an essentially individual rights regime be gainfully utilized to overcome the deprived status of the Groups?

It also needs to be understood that in strict rights parlance, the village level entities engaged in managing local resources need to develop both ‘Internal Rights’ that the members of the village group can exercise against each other as well as the ‘External Rights’ that the group can enforce against anyone and everyone outside the group.

**The State of Customary Rights, Easements**

Increasingly we are moving towards a regime of state-centric and statute-driven laws. The ‘non state legal formations’ are generally being dubbed as ‘informal’ and thus falling out of the formal legal frame work with the latter, for all practical purposes, being seen as the operative part of the law. Decisions of the court since independence including some recent ones show that the customary rights would need to be recorded as state-sanctioned formal rights to be relevant. Law’ in’

society (including customary laws) has to somehow be seen as part of today’s law ‘for’ society (formal laws laid down by statutes and courts) for them to find ready acceptance from policy-and lawmakers.\(^8\) In other words, customary right need to be part of record of rights for them to find ready acceptance in the dominant legal tradition today. It is useful to note in this context that an entry made in the record of rights or in an annual record shall be presumed to be true until the contrary is proved.\(^9\)

Having said that, the norms of natural law, customary and traditional practices have continued to hold its appeal not only with the intelligentsia but also critically with law framers. This has most notably been visible in the design of policy and laws for the tribals. However, here also, while the point is accepted, in principle, little has been done to give operative content to these principles. Thus while there is some literature on customary practices and norms there continues to be very little understanding of what are the existing customary laws in various parts of the country.

Here it needs to be made clear that a customary right should not be confused with an ‘easement’. Under the Indian law an Easement refers to a right which the owner occupier or certain land possesses as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.\(^10\) Thus an easement is annexed to the ownership of a dominant, tenement/land, and it is not exercisable for the more beneficial enjoyment of the dominant tenement.

\(^8\) See Upadhyay Videh: Customary Rights over Tanks – Some Plain Talking on Limits of Customs, Economic and Political Weekly, November 1, 2003
\(^9\) See for one example Section 44 of the Punjab Land Revenue Act. There are Court judgments that make clear that Entries in the record of rights made or authenticated at a regular Settlement shall be presumed to be true.
\(^10\) See Section 4 of the Indian Easements Act, 5 of 1882.
Understanding the three processes of (a) recording of rights under revenue settlements, (b) specific statues mandating these settlements and giving legal basis to the recorded rights and further (c) conflicts arising out of these in the Courts would all need a closer understanding for exploring the legal status of both community and customary rights in India. One good place to begin can be an examination of *Wazib-ul-urz* and *Nistar Patrak* for specific village areas surviving in the present day Madhya Pradesh as a case study of recorded rights. *Wajib-ul-arz* also called the village administration paper has statutory recognition. It records the customs “in each village….. in any land or water not belonging to or controlled or managed by the state government or a local authority”. On the other hand, the *Nistar Patraks* incorporate the rights of the village people on the public lands.\(^{11}\)

Having said the above the interest in exploring the dimensions of community rights in today’s times is open to question. Scholars believe that the emergence of land markets sometimes concentrates property rights in individual ‘owners,’ restricting the rights held by other claimants under customary tenure systems. Another interesting dimension of the issue is that the implementation of structural adjustment programmes in India over the last close to two decades has promoted economic reform and Tenure reform is often seen as an integral component of these wider changes. Despite that there is very little being done in terms of analysis and assessment of the need to integrate customary and statutory systems in the whole reform process.

**The State of ‘Community Rights’: The Case of PESA**

Taking a hard look at one of the most significant legislation for the tribal people enacted in Independent India best provides a clear pointer to a law’s efficacy in the

\(^{11}\) Note here that it has been held in a number of cases that the entry regarding agreement in a *Wajib-ul-arz* holds good during the period of the Settlement in which it is made and becomes inoperative when the Settlement has come to an end.
country’s tribal lands. The law being discussed here is the Provisions of the Panchayat (Extension To Scheduled Areas) Act enacted as a central law in 1996 [hereinafter called PESA] The PESA applicable only in tribal areas (excluding North East) sought to empower the village people, through the Gram Sabha, to protect community resources, control social sector functionaries, own minor forest produce, manage water bodies, give recommendations for mining leases, be consulted for land acquisition, enforce prohibition, identify beneficiaries for poverty alleviation and other government programmes and have a decisive say in all development projects in the villages. This was indeed a radical law and it attempted a significant transfer of power to the people vesting the Gram Sabha and the Panchayats with remarkably wide ranging powers. Despite its criticism from certain quarters, it needs to be conceded that perhaps no law in Independent India has talked so eloquently about ‘customary law’ ‘community resources’, village as a community, village people safeguarding their ‘traditions and customs’ and so on.

However well over a decade of the progress of law from 1996 shows why any new law meant for tribal welfare can begun crowding the law books without evoking much response on the ground. Note here that all the ten states with tribal areas were to adopt this law within one year after PESA came into being in 1996. Almost all the States have simply failed to internalize the spirit of the law and the way they adopted the law is a good testimony of this. First there are critical omissions of some of the fundamental principles without which the spirit of PESA can never be realized. Secondly, the States have invariably twisted certain words from the Central PESA that has resulted in powers being taken away from the Gram Sabha where the need for empowerment is most critical for making local self-governance a reality in the Country. Thirdly, even where it affirmed some provisions of the law in principle, their applicability was made subject to framing of rules/ orders. Such enabling rules are not yet in place in many cases. Even where rules have been sought to be made, as for example in Rajasthan, they do not
specify (a) operational responsibility between one level of Panchayat and the other with respect to precisely identified activity/scheme/programmes, and (b) the relationship of the Panchayati Raj Institutions with the State Government Departments. It has been pointed out before that this has been deliberately kept as a gray area because ‘in the absence of clarity of jurisdictions it is the state administration that retains the power.’ All this has meant that the separately carved out legal regime for strengthening community control over resources in tribal areas has promised more and delivered less.

**LAND ACQUISITION IN INDIA: LEGAL PRINCIPLES AND PROCESSES**

**The Conceptual foundation of ‘Eminent Domain’**

The points are arguments made above should also suggest that any discussion on rights and natural resources in India needs to be informed by a historical perspective and in doing so critical aspects and premises of colonial legality needs closer understanding. One such premise related to the pervasive applicability and use of the doctrine of eminent domain. The doctrine empowered the State to take property for the public use without the owner’s consent. By making the sovereign right over the resources obsolete, while not demarcating the contours of “public use” the principle promised an easy way to provide blanket legal sanctity. The concept can be said to have provided the legal justification for expedient political processes.\(^{12}\) The Supreme Court in one of its decision in the year 1952 held that “Since the power of Eminent Domain is inseparable incidence of sovereignty, there is no need to confer this authority expressly by the Constitution”\(^{13}\) Following the attainment of Indian Independence intervention by the Courts has tried to blunt the sharp edges of the eminent domain by incorporating and developing the right to adequate compensation for any acquisition of land while...

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\(^{12}\) It has argued been argued while discussing rights of the tribal that “the concept provided the legal justification for an entirely expedient political process that had progressively deprived the tribal of his land in the colonial era ” See Upadhyay Videh: *Tribals and their land: Historical Wrongs, Legal Rights*, The Pioneer May 5, 2000.

\(^{13}\) **State of Bihar V. Kameshwar Singh** AIR 1952 SC 252, 259.
interpreting the provisions of the Land Acquisition Act, 1894. This law is discussed next.

**Land Acquisition Act, 1894 – An Introduction**

The legislative mandate for acquiring land for public purposes comes from the Land Acquisition Act of 1894 (hereinafter also referred to as “LAA”). The Land Acquisition Act, 1894 allows for land acquisition in the national interest for infrastructure projects for example, power plants, dams, canals, industrial plants, transmission lines and highways to be carried out by the respective States or companies, in accordance with the provisions laid down under the enactment. Under the Act, monetary compensation is provided in lieu of the loss of land, other assets like standing crops and trees, dwelling units, etc. The land, the interests of which is already vested in Government and in which no interests of private person exist, cannot form the subject of proceedings under the Land Acquisition Act. The transfer of such land from one department to another or to a local authority or to a Corporation owned or controlled by the State or Company can be arranged for by executive action without resorting to the provisions of the LAA.

**THE NINE STEPS/POINTER TO ACQUISITION OF LAND UNDER THE LAND ACQUISITION ACT, 1894**

1. **Notification under Section 4**

   **Likelihood of land being acquired**

   The process of acquisition begins with the issuance of a notification, as envisaged under Section 4(1) of Land Acquisition Act, 1894. Whenever the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect is issued. The notification has to be essentially published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language. Further, it is also necessary that the notification has to be affixed in conspicuous
places of that locality. The last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

**Power to enter upon and survey the land**

After the issuance of notification under Section 4(1), it is lawful for the Government and its officers etc. to enter upon and survey and take levels of any land in such locality; and to do all other acts necessary to ascertain the suitability of the land to be acquired and to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; as well as do all other incidental and ancillary activities including marking levels, boundaries. However, if the if the Government and/or its officers are to enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) it will have to give the such occupier at least seven days' notice in writing of his intention to do so.

**Prohibition on further sale, transfer after notification**

Once the land has been placed under Section 4, no further sales or transfers are allowed.

2. **Section 5(A): Filing of objections against land acquisition**

**Objective of issuance of preliminary notification**

The main objective of issuing preliminary notification is to call for objections, if any, against such acquisitions from the owners or others who are having certain interest over the land and giving them an opportunity to raise their objections and claims against the intention of the government for acquiring their lands. Any person interested in any land\(^{14}\) which has been notified under section 4 (1), as being needed or likely to be needed for a public purpose or for a Company may raise objections within 30 days to the Collector of the concerned District.

\(^{14}\) Section 5(A)(3): A person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.
Hearing of preliminary objections

After objections are made to the Collector in writing, the Collector shall give the objector an opportunity of being heard and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4 (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

3. Declaration under Section 6, Land Acquisition Act, 1894

Declaration of Government’s intention to acquire land

The Concerned authority after considering the report made under section 5A, is of the view that any particular land is needed for a public purpose, or for a Company, he shall make a declaration to that effect. Thereafter the land is then placed under Section 6 of the LAA which amounts to a declaration that the Government intends to acquire the land.

Time limit for making declaration

The declaration in respect of any particular land covered by a notification under section 4 shall be published shall be made before the expiry of one year from the date of the publication of the notification under section 4(1).

However, prior to the amendment\textsuperscript{15}, the time stipulated under the Act for final declaration was three years from the date of publication of the preliminary notification. The final declaration has to be published as required under section 6(2) of the Act.

Compensation to be paid by a Company, or wholly or partly out of public revenues

LAA provides that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or

\textsuperscript{15} Land Acquisition (Amendment) Act, 1984 (68 of 1984)
wholly or partly out of public revenues or some fund controlled or managed by a local authority.

4. Measurement & Marking of Land under Section 7 & 8 Land Acquisition Act, 1894

Order for acquisition & measurement and marking of land

After the declaration under Section 6 of LAA, that the notified land is needed for public purpose, or for a Company, the appropriate Government shall direct the Collector to take order for the acquisition of the land. Thereafter, such notified land is marked out, measured and planned. (Section 7 & 8, LAA)

5. Notice to person interested under Section 9, Land Acquisition Act, 1894

Inviting claims for compensation

The Collector is directed to take steps for the acquisition, and the land is placed under Section 9. Interested parties are then invited to state their interest in the land and the price. The Collector is required to cause a public notice at convenient places on or near the land to be taken, stating that Government’s intention to take possession of the land, and that claims to compensations for all interests in such land may be made to him.

Such notice is required to state the particulars of the land to be acquired, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time at least 15 days after the date of publication of the notice and place therein mentioned.

The interested parties are to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector shall also serve notice to the same effect on the occupier (if any) of such
land and on all such persons known or believed to be interested therein, or to entitled to act for persons so interested.

6. **Enquiry and Award by Collector under Section 11**

*Award for compensation for land acquisition*

Section 11 of the Act provides that the Collector will have to hold an enquiry into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4(1) and into the respective interests of the persons claiming the compensation. Thereafter the Collector shall make an award stating

- the true area of the land;
- the compensation which in his opinion should be allowed for the land; and
- the apportionment of the said compensation among all the persons interested in the land.

if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. The determination of compensation for any land hereinabove shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

7. **Time Limit for making Award under Section 11(A)**

Once the enquiry is concluded, it is the duty of the competent authority to pass the award within two years from the date of publication of the declaration under section 6, as envisaged under section 11 A of the LAA. If the authority fails to adhere to the time schedule prescribed under the Act, the entire proceedings initiated for land acquisition will lapse.
8. **Finality of Award under Section 11**

The award under Section 11 shall be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the appointment of the compensation among the persons interested. However, the Collector is required to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

9. **Possession of land under Section 16**

After making the award under section 11, Collector may take possession of the land, which shall thereupon vest absolutely in Government, free from all encumbrances. After passing of the award, the Deputy Commissioner or any other competent authority may take possession of the land immediately, which shall thereupon vest absolutely with the government, free from all claims, whatsoever.

**Compensation for land acquisition**

Compensation for land and improvements (such as houses, wells, trees, etc.) is paid in cash by the project authorities to the State government, which in turn compensates landowners. The price to be paid for the acquisition of agricultural land is based on sale prices recorded in the District registrar's office averaged over the three years preceding notification under Section 4. The compensation is paid after the area is acquired, actual payment by the State taking about two or three years. An additional 30 percent is added to the award as well as an escalation of 12 percent per year from the date of notification to the final placement under Section 9. For delayed payments, after placement under Section 9, an additional 9 percent per annum is paid for the first year and 15 percent for subsequent years.
Special power to acquire land in cases of urgency

Section 17 of the Land Acquisition Act, 1894 confers special powers with the concerned authority wherein passing of award under Section 11 may be dispensed with and yet permits to take possession of the land notified for acquisition. However, such powers can be exercised only in case of urgency. Thus, in cases of urgency whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

Further, in the case of such an emergency as envisaged under Section 17, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4 (1).

It may be noted here that The National Rehabilitation and Resettlement Policy, 2007 deleted previous provisions of the 2006 Draft Policy which provided that emergency provisions under Section 17 of the Land Acquisition Act of 1894 should be “used rarely” and should be applied only after considering “full justification” of the proposed project. This new Policy on Rehabilitation and Resettlement is discussed next.

THE NATIONAL REHABILITATION AND RESETTLEMENT POLICY, 2007

The National Rehabilitation and Resettlement Policy, 2007 that has recently come into force grows out of the experience of the earlier National Policy on Resettlement and Rehabilitation for Project Affected Families that was formulated
in 2003. The new policy records in its preamble that the “Experience of implementation of this (2003) policy indicates that there are many issues addressed by the policy which need to be reviewed. There should be a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families - economic, environmental, social and cultural- needs to be assessed in a participatory and transparent manner.” The additional reasons in principle behind the new Policy can be culled out of the preamble of the Policy itself and these are reproduced in the Box below.

**The National Rehabilitation and Resettlement Policy, 2007: Why we needed it?**

Provision of public facilities or infrastructure often requires the exercise of legal powers by the state under the principle of *eminent domain* for acquisition of private property, leading to involuntary displacement of people, depriving them of their land, livelihood and shelter; restricting their access to traditional resource base, and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, in particular of the weaker sections of the society including members of the Scheduled Castes, Scheduled Tribes, marginal farmers and women. Involuntary displacement of people may be caused by other factors also.

There is imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of the affected persons, rather than as externally-imposed requirements. Additional benefits beyond monetary compensation have to be provided to the families affected adversely by involuntary displacement. The plight of those who do not have legal or recognised rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework not only those who directly lose land and other assets but also those who are affected by such acquisition of assets. The displacement process often poses problems that make it difficult for the affected persons to continue their earlier livelihood activities after resettlement. This
requires a careful assessment of the economic disadvantages and social impact of displacement. There must also be a holistic effort aimed at improving the all round living standards of the affected people.

Source: Clause 1.1. and 2.2 of The National Rehabilitation and Resettlement Policy, 2007

**Applicability and Mechanism of the New Policy**

The Preamble of The National Rehabilitation and Resettlement Policy, 2007 states that: “A national policy must apply to all projects where involuntary displacement takes place”. However, the appropriate Government shall declare area of villages or localities as an “affected area” only if there is likely to be “involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution due to acquisition of land for any project or due to any other reason”.

After the declaration of an area as “affected area”, the Administrator for Rehabilitation and Resettlement undertakes a baseline survey and census for identification of the persons and families likely to be affected by the proposed project. The 2007 Policy also provides that the appropriate Government may appoint an Administrator for Rehabilitation and Resettlement (hereafter called “Administrator”), who is an officer not below the rank of District Collector, to oversee the resettlement and rehabilitation plan. But the Administrator can delegate his/her powers and duties to any officer not below the rank of Tehsildar or equivalent. The Administrator is vested with the power of “overall control and superintendence of the formulation, execution and monitoring of the rehabilitation and resettlement plan” However, the Administrator can only exercise his powers and functions “subject to the superintendence, directions and control of the
Introduction of Social Impact Assessment of Projects

The new Policy introduces for the first time in India the need for Social Impact Assessment (SIA) of Projects by laying down that “the appropriate Government shall ensure that a Social Impact Assessment (SIA) study is carried out in the affected areas in such manner as may be prescribed.” According to the Policy while undertaking a social impact assessment, the appropriate Government shall, *inter alia*, take into consideration the impact that the project will have on public and community properties, assets and infrastructure; particularly, roads, public transport, drainage, sanitation, sources of safe drinking water, sources of drinking water for cattle, community ponds, grazing land, plantations; public utilities, such as post offices, fair price shops, etc.; food storage godowns, electricity supply, health care facilities, schools and educational/training facilities, places of worship, land for traditional tribal institutions, burial and cremation grounds, etc. The Policy makes clear that “Where it is required as per the provisions of any law, rules, regulations or guidelines to undertake environmental impact assessment also, the SIA study shall be carried out simultaneously with the Environmental Impact Assessment (EIA) study.”

Rehabilitation and Resettlement Benefits for the Affected Families

Rehabilitation and Resettlement Benefits for the Affected Families are provided under Chapter VII of the new Policy. Some of the main provisions in this regard include:

- Any affected family owning house and whose house has been acquired or lost, may be allotted free of cost house site to the extent of actual loss of area of the acquired house but subject to a cap in rural and urban areas.
• Each affected below poverty line family which is without homestead land and which has been residing in the affected area continuously for a period of not less than three years preceding the date of declaration of the affected area and which has been involuntarily displaced from such area, shall be entitled to a house of minimum one hundred square metre carpet area in rural areas, or fifty square metre carpet area in urban areas.

• Each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost, may be allotted in the name of the khatedar(s) in the affected family, agricultural land or cultivable wasteland to the extent of actual land loss by the khatedar(s) in the affected family subject to a maximum of one hectare of irrigated land or two hectares of un-irrigated land or cultivable" wasteland, if Government land is available in the resettlement area.

• In the case of irrigation or hydel projects, the affected families shall be given preference in allotment of land-for-land in the command area of the project, to the extent possible.

• In case of allotment of wasteland or degraded land in lieu of the acquired land, each khatedar in the affected family shall get a one-time "financial assistance of such amount as the appropriate Government may decide but not less than fifteen thousand rupees per hectare for land development.

• The ‘requiring body’ shall give preference to the affected families – at least one person per nuclear family - in providing employment in the project, subject to the availability of vacancies and suitability of the affected person for the employment.
The list of the benefits as above shows that the Policy while planning for ‘land for land’ to the extent possible, does not guarantee land-for-land compensation to the displaced families. Civil society organizations also feel that under the Policy the affected persons are denied the rights to take any kind of informed decision regarding the usage of their lands with regard to development projects.

**Rehabilitation and Resettlement Enactments by the State Governments**

The three legislations namely *The Maharashtra Rehabilitation Act, 1989, Madhya Pradesh Pariyojna ke Karan Visthapit Vyakti (Punsttapan) Adhiniyam, 1985 (Madhya Pradesh Resettlement Act) and the Karnataka Resettlement of Project-Displaced Persons Act, 1987* were considered progressive legislations and were aimed at resettlement and rehabilitation of the project affected person at the state level. However, there were major lacunae which limited the effect of these progressive legislations. All of the state enactments were either project specific or their applicability was dependent on the discretion of the government. The Madhya Pradesh Act, for example, basically revolves around affected persons of irrigation projects and hence has a limited focus. The package of rehabilitation in most of these acts is again as provided under Land Acquisition Act, which means that money is the basic criteria for compensation. The question whether the “land for land” should be effected as premise for rehabilitation has not been answered by all the existing laws.

**PROTECTING AND RESTORING THE TRIBAL LANDS: A Policy and Legal Perspective**

A bevy of national and state laws have been passed from time to time in Independent India with the objective of protecting the interest of tribals in their lands. In particular, the prohibition of transfer of land from tribals to non-tribals has been included in various Land Revenue Codes and Land Regulations and Acts passed by different states. For a typical example let us see the provisions under the *Land Revenue Code of Madhya Pradesh.*
The M.P. land Revenue Codes provides restriction over transfer of land held by any person who is designated as aboriginal by a notification of the State Government (Section 168). The law provides that any transfer of land held by a tribal to a non-tribal shall not be without prior permission of the Collector in charge of the area and this permission shall be in writing and with recorded reasons of granting such permission. The Code taking a pro-active approach provides that the Collector before granting such permission should ascertain that the person acquiring the land has been a resident of the area, shows purpose of the transfer, proves adequacy of the consideration and such other matters as may be prescribed. The collector has also been provided with the power to initiate *suo moto* inquiry within five years of the transfer.

However, despite this categorical legal imperative, land alienation of the tribals persists, and in large areas of the country it is now endemic. Official figures show that every year the number of landless in the country increases by two million. A well known study, relied upon by the a Steering Committee of the Planning Commission for the Tenth Five Year Plan, points out that in four districts Dhenkanal, Ganjam, Koraput and Phulbani in Orissa about 56 percent of the total tribal land was lost to non-tribals over a 25-30 year period.

With the mandate of finding a lasting solution to the vexed problem of tribal land alienation and consequent indebtedness, various Commissions and Committees were appointed in the past. Indeed, some of the legislative and judicial measures suggested were radical and far-reaching. These include, among others: ousting the jurisdiction of civil courts in cases of eviction of Scheduled Tribes, suspending the operation of the Limitation Act in cases of dispute relating to the tribal land, separate legislation for the conferment of the ownership rights, provisions in all civil suits involving tribal land for making the government a party and empowering it to give and rebut evidence, banning transfers of tribal land to non-
tribals in all states and Union Territories, amending the law of evidence to place oral evidence on a higher pedestal, and establishing special courts for prompt disposal of land alienation cases.

However, one feels that the continuance of the problem is a reflection of the fact that the recommendations of the various committees address only the symptoms of the problem and not their roots.