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LAND ACQUISITION AND RIGHTS OF INDIGENOUS PEOPLE:  
SPECIAL REFERENCE TO DAM PROJECTS IN ODISHA

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**Abstract**

Land acquisition is a process of purchase of land belonging to the citizens by the Government for the purpose of various infrastructure and development projects. Tribal people's rights are broad human rights in recent times. The development projects forced them to losing their land means a loss of contact with their mother land and loss of identity. Protections of indigenous land rights continue to be a major challenge, with the gap between development-induced displacement and rehabilitation in India. In India the development projects displaced so many indigenous peoples from their lands. Many of these projects are opposed for their human rights and environmental impacts. The rights of Indigenous Peoples are guaranteed in the Indian Constitution. Part IV of the Constitution lays down the Directive Principles of State Policy. Several laws and constitutional provisions in India recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous people's right The Indian government voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The DPSP lay down the fundamental principles for the governance of the country and the state is directed to secure the ownership and control of the material resources of the tribal community are so distributed as best to the common good.

**Key words:** *Rights, acquisition, development, land & indigenous.*

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**Introduction**

Land Acquisition and development induce-displacement of Population is the single largest category among all Internally Displaced Populations (IDPs). Majority of districts of Odisha have forests and tribal populations. Needless to say, there exists a symbiotic relation between the two. The tribal populations still consider forests to be their natural habitation. But due to various development projects vast tracts of forest land were alienated under Land Acquisition and similar laws. In India the main legislation pertaining to land acquisition is the Land Acquisition Act, 1894. The legislation was enacted by the British to suit the colonial need of exploiting the resources to the benefit of the British Industrial Revolution. In order

to achieve the industrial growth, the colonial regime required monopoly over land for coal mine, coffee and tea plantation, roads, railways and other schemes. During colonialism, India's traditional land use and land ownership patterns were changed to ease the acquisition of land by British entrepreneurs. The introduction of institution of private property had made the community ownership system illegal<sup>1</sup>. Land acquisition in India may be defined as the action of the government whereby it acquires land from its owner in order to pursue certain public purpose or for company. The Act authorizes

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<sup>1</sup> Mridula Dhekial Phukan, „Internally Displaced Persons In North-East India With Special Reference To Assam-A Socio-Legal Study“, Ph.D Thesis, Gauhati University, 2012. P.147-149

governments to acquire land for public purposes such as planned development, provisions for town or rural planning, provision for residential purpose to the poor or landless and for carrying out any education, housing or health scheme of the Government<sup>2</sup>.

The definition of the term public purpose in the Act is inclusive, and is often interpreted very liberally to include variety of uses such as roads, play grounds, offices and factories, benefiting only a portion of the society. Under the Act the Government is required to make a public notification of the intention to take over the land. The notification has to be published in the official gazette and in two daily news papers circulation in that locality of which at least one shall be in the regional language<sup>3</sup>. After the notification the government is also required to make an enquiry into objection that may be filed by the people interested in the land or property<sup>4</sup>.

The tribal's who live in the forest or land adjacent to it's, are the most affected people due to the acquisition of land for public purpose. Large-scale development projects in tribal areas have physically evicted significant numbers of the tribal community. About 40% of the total tribal populations have been displaced by development projects. Tribal communities lack other skills to survive in varied environments.

The United Nations Environment Programme (UNEP) Report, 2003 cites the examples of the *Karjan* and *Sukhi* reservoirs in the State of Gujarat that displaced only tribals. The Balimela Hydro Project in the State of Orissa displaced a large number of people, 98% of whom were tribals. Similarly, In Upper Kolab Dam project, 96% of the evacuated people belong to tribal community<sup>5</sup>.

<sup>2</sup> Section 3 (f), *The Land Acquisition Act, 1894*.

<sup>3</sup> Ibid, Sec. 4 (1).

<sup>4</sup> Ibid, Sec. 5 A (1).

<sup>5</sup> www,Sodhaganga.inflibnet.ac.in.

There has been very significant increase in open unemployment rates; people are unable to find any kind of job like it part time, a subsidiary job, or even very small low-paying jobs. Irrigation projects have been the largest source of displacement and destruction of habitat. Apart from the fact that people displaced on account of big dams are usually not the beneficiaries of the same. There is also a debate as to whether big dams are strictly required and whether small dams and watershed projects with much lower human costs can provide the same benefit<sup>6</sup>.

**Objective:** The objective of the study is to present the land acquisition status in Odisha and two project areas. To study the constitutional and legal provisions in India

**Methodology:** The present study on land acquisition and tribal people's rights sought to construct, through the analysis of primary and secondary data, constitutional provision and law in India.

### **International Instruments for the Protection of Indigenous People**

The Universal Declaration of Human Rights (1948)<sup>7</sup>, International Covenant on Civil and Political Rights (1966)<sup>8</sup>, International Covenant on Social, Economic and Cultural Rights (1966), the U.N Declaration against Racism and Racial Discrimination (1978)<sup>9</sup> etc. Bear upon the situation of tribal people though not explicitly. The United Nations Declaration on Racism and Racial Discrimination (1978) endorses the right of tribal people to maintain their traditional structure of economy and culture and stresses that

<sup>6</sup> Asit Das, '*displacement: Indian State war on Its Own People*', <<http://sanhati.com>> (accessed 20 December 2019).

<sup>7</sup> Adopted and proclaimed by the United Nations General Assembly Resolution 217 (III) of 10<sup>th</sup> December 1948.

<sup>8</sup> Adopted and opened for signature, ratification and accession by the General Assembly Resolution 2200 A (XXI) of 16<sup>th</sup> December 1966.

<sup>9</sup> Adopted and proclaimed on 27<sup>th</sup> November by the General Conference of UNESCO, 1978.

their land, land rights and natural resources should not be taken away from them<sup>10</sup>.

### Constitutional Developments

The object of the Constitution as revealed by the preamble pledge is to promote justice: social, political and economic; and to preserve the liberty, equality and freedom of individuals. The modus operandi to achieve these objectives is set out in Part III<sup>11</sup> and Part IV<sup>12</sup> of the Constitution dealing with fundamental rights and directive principles of State policy respectively. Constitutional Government in India<sup>13</sup> discusses the main factors responsible for the incorporation of fundamental rights in the Indian Constitution. However, the work mechanically enumerates the fundamental rights, paying no particular attention to the social, legal and economical implications of land acquisitions. Indian Constitutional Law<sup>14</sup> has taken great pains in exploring the legal interpretation of various Constitutional provisions. This treatise gives guidelines for systematising the judicial decisions on land acquisitions.

Prior to Forty Fourth Constitutional (Amendment) Act, 1978, the Constitution guaranteed a fundamental right to all citizens to acquire, hold and dispose of property. In case of *Hindu Religious Endowments v. Lakshmindra*<sup>15</sup>, Supreme Court enquired why the word 'property' as used in Article 19 (1) (f) should not be extended to those well recognized types of interests which have the characteristics of proprietary rights; and further held that Article 19 (1) (f) applies equally to concrete as well as abstract rights of

property; and that the administration of property by a religious denomination is a fundamental right which no legislature can take away. In *Kesavananda Bharati v. State of Kerala*<sup>16</sup>, the apex Court upheld the power of the government to acquire land for implementing the directive principles of Constitution. In *Gwalior Rayons Silk Mfg. v. Government of Kerala*<sup>17</sup>, it was held that acquisition shall be made only in accordance with the principles laid down in Article 31-A of the Constitution. Provision to the said article prescribes that the consent of President of India is a pre-requisite for the validity of any law which provides for acquisition of land.

### Land Acquisition Laws

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, enacted by Parliament to provide just and fair compensation to the affected persons due to development projects, which had come into force from January 1, replacing the 120-year-old legislation. Prior to 2013, land acquisitions by the States and the Central government were done in accordance with the Land Acquisition Act of 1894; this act allows the Government to acquisition of private lands for development purposes<sup>18</sup>.

According to the new Act, the consent of landowners was made the must for acquisition unlike the older act. The Social Impact Assessment study should take place to find out whether the proposed acquisition serves public purpose, estimation of affected and likely to be displaced families, the nature and costs of addressing them, and the impact of these costs on the overall costs of the

<sup>10</sup> Article 7, United Nations Declaration on Racism and Racial Discrimination (1978).

<sup>11</sup> Article 12 to 35

<sup>12</sup> Articles 36 to 51.

<sup>13</sup> M.V Pylee, *Constitutional Government in India*, (6<sup>th</sup> edn., S. Chand and Co. Pvt. Ltd., 2007).

<sup>14</sup> M.P Jain, *Indian Constitutional Law*, (4<sup>th</sup> edn. 1978).

<sup>15</sup> [1954] SCR (1) 1005.

<sup>16</sup> AIR 1973 SC 1461.

<sup>17</sup> AIR 1979 Ker.56

<sup>18</sup> R. S, Land Acquisition Laws in India and the Duplicitous Deals, Nov. 5, 2014

<https://www.mapsofindia.com/my-india/society/land-acquisition-laws-in-india-and-the-duplicitous-deals>

Retrieved on 30<sup>th</sup> September 2022

project and the law provides for payment of compensation up to four times the market value in rural areas and up to twice the market value in urban areas to ensures fair payment to the landowners. It also provides for Resettlement and Rehabilitation ("R&R") of all project affected persons.

### Land Acquisition and Displacement Scenario in Odisha

In Odisha the irrigation projects are mostly constructed in tribal and forest hill areas where the tribal's live in. Tables Below represents the human displacement from multipurpose, major and medium projects in Odisha.

**Table 1. Number of Displaced Families due to multipurpose dam projects in Odisha**

Name of the project	Number of Displaced Families			
	General	SC	ST	Total
Multipurpose				
(i)Hirakud	Na	Na	1,636	22,144
(ii)Balimela	Na	Na	Na	1,200
(iii)Salandi	32	5	352	569
(iv)Rengali	8,015	1,710	1,172	10,897
(v)Upper Indravati	1,557	338	1,630	3,725
(vi)Upper kolab	1,308	442	1,421	3,371
Total	10,912	2,495	6,211	41,706

Source: Government of Odishaa, 2019

The table shows the status of tribal displacement due to the dam projects. In the project areas of Salandi, Upper Indravati and Upper Kolab, the tribal's

are mostly affected than others. In these areas the tribal's are mostly living in remote areas till today having lack of basic facilities.

**Table -2: Number of displaced families due to major dam projects in Odisha**

Major Irrigation Projects	General	SC	ST	Total
Subarnrekha	2,246	416	6,382	9,044
Rengali	918	81	10	1,009
Total	3,164	497	6,392	10,053

Source: Government of Odishaa, 201

The table shows the equal situation in Subarnarekha Irrigation Project. The tribal's are highly affected than other categories in these Project areas. Where the status of displacement affected more

nos. of tribal's, there the condition of the tribal's are highly affected in their economic and social life.

**Table 3: Number of displaced families due to medium irrigation projects in Odisha**

Name of the Project	Number of Displaced Families			
	General	SC	ST	Total
Medium irrigation Projects				
(i) Dadarghati	228	66	133	427
(ii) Derjang	327	29	-	356
(iii) Baghua	406	8	96	510
(iv)Ghodahad	3	-	65	68
(v)Baghlati	17	15	91	123
(vi) Demerbahal	74	23	156	253
(vii) Pilasalki	57	24	104	185
(viii)Kuanria	49	54	48	151
(ix) Daha	3	10	7	20
(x) Remal	1	2	1	4

(xi) Sarafgarh	26	3	0	29
(xii) Jharbandh	120	2	4	126
(xiii) Talasara	1	3	19	23
(xiv) Gohira	51	18	74	143
(xv) Ramiala	166	159	89	414
(xvi) Sunet	84	2	267	353
(xvii) Kanjhari	113	4	80	197
(xviii) Bankabahal	98	35	149	282
(xix) Kansbahal	10	29	172	211
(xx) Hariharjore	140	41	213	394
(xxi) Harbhangi	17	8	128	153
(xxii) Badnala	4	2	163	169
(xxiii) Upper Jonk	46	30	225	301
Total	2,041	567	2,284	4,892
Grand Total	16,117	3,829	14,887	57,386

Source; Government of Odishaa, 2019

Out of the total 41,706 families displaced by multipurpose dam projects, 6211 families are scheduled tribes i.e., around 15% of the total families displaced are tribal. In koraput district, where tribal population is 58% have 18 large schemes, occupying 5,00,000 acres or, 7.42% of their area. According to one estimate, the schemes have deprived 6% population of the district, mostly tribal, of their livelihood. Thus at least 10% of the tribal in these districts have been affected. The land taken over includes 4,00,000 acres of forest on which the tribal have depended for their sustenance though they didn't have a legal to it<sup>19</sup>.

**Table-4: Area acquired and villages affected by development and conservation projects in Odisha.**

Sl. No	Projects	Area acquired or affected (ha.)	No of villages affected
1	Irrigation- Dam projects (Major) Completed	200423	900
2	Irrigation- Dam projects (Medium) Completed	14403	118
3	Irrigation- Dam projects (Medium) Ongoing	12160	92
4	Irrigation- Dam projects (Major) Proposed	30233	113
5	Industries (All types of Industries)	45358	176
6	Mines (All types of mine leases given out)	101947	NA
7	Wild life Sanctuaries and National Parks	811155	771
	<b>Total</b>	<b>1215679 acres</b>	<b>2170</b>

The table shows the nos. Of villages and land acquired for the development projects in Odisha. The highest land acquired in irrigation and dam projects, Which mostly affected to the tribal Indigenous peoples in Odisha.

**Table-5: Displacement due to various development projects in Orissa**

Sl. No	Type of Project	No of villages displaced/ affected	No of families displaced/ affected	Total land acquired (in hectare)
1	Mines	79	3143	2427.03

<sup>19</sup> Orissa Development Policies and Rural Poverty in Orissa: Macro Analysis and Case Studies, A Study, by Vasundhara, Bhubaneswar Support from Planning Commission, March, 2005, Sricharan Behera, Vasundhara, Bhubaneswar, 2005.

2	Industries	113	10704	21963
3	Thermal Power	73	2426	3155.31
4	<b>Dams (Irrigation/Hydro)</b>	<b>1181</b>	<b>64903</b>	<b>595918.6</b>
	<b>Total</b>	<b>1446</b>	<b>81176</b>	<b>623463.94</b>

Source: Irrigation Department, Govt. Of Odisha 2019

The table shows the displaced/affected villages and acquired land for the purpose of various development projects in Odisha, which are basically situated in tribal areas of Odisha.

#### Case Study on Subarnarekha

##### Irrigation Project in Odisha

The narrow area of this study is on tribal displacement in Odisha with specific response to Subarnarekha Irrigation Project (SIP).

##### Subarnarekha Irrigation Project

The Subarnarekha Irrigation Project is the outcome of a tripartite agreement among the co-basin states of erstwhile Bihar (present state of Jharkhand), Odisha and West Bengal in the year 1978 to utilize the Odisha's share of Subarnarekha water to the extent of

1409 Mcum allocated under the agreement to irrigate 1,09,627 Ha. Of agricultural land in the district of Mayurbhanj and Balasore, a total of 109 numbers of villages gets affected with submergence area of 8596 Ha. On account of construction of 3 command Area Reservoir in Orissa and one reservoir in Jharkhand state. For resettlement of Displaced Families of 3 reservoirs namely Haladia, Jambhira and Baura, Rehabilitation Advisory committee (R.A.C) had been constituted by Irrigation and Power Department in 1987.

**Table 6: Details of villages affected by the projects.**

Features	Haladia	Jambhara	Baura	Ischa	Total
Fully	1	14	6	3	24
Partly	9	11	16	4	40
Agricultural Land only	6	10	-	29	45
Total	16	35	22	36	109

Source: RPDAC, PD, R/R SIP,

##### Jambhira Reservoir

Out of three Command Area Reservoirs, Jambhira reservoirs have highest submerged villages and population displacement. For construction up to the ultimate height of the Jambhira Reservoir, 35 villages will be affected and out of which 14 nos. villages are fully, 11 nos. are partly and 10 nos. of villages affected with loss of agricultural land only. 25 villages are coming within the F.R.L (Full Reservoir Level) line of the ultimate Jambhira Earth Dam for rehabilitation. Out of total 25 villages,

rehabilitation and resettlement of 21 villages, presently submerged had been taken up 3and R and R assistance has been paid to 2884 DFs. Out of this 1466 families are belongs to scheduled tribes. The project work has started from 1986 and till today it have not completed. The R/R package has not completed to the affected tribal's in Jambhira project areas. Till now the survey is continuing to provide the r/r assistance to the affected persons. According the displacement figure of table nos.2.7 the total displace persons are 9,044.

**Table: 7: List of affected villages under Jambhira reservoir**

SL.NO	Name of the village	submergence
1	Badabadatalia	partly
2	Bhaguasole	partly
3	Betanta	partly
4	Daradiasole	partly
5	Dhadipada	partly
6	Dhobanisole	partly

7	Ketuanimari	partly
8	Nagasole	partly
9	Sunaposi	Partly
10	Tadaki	partly
11	Tubulubhadu	partly
12	Andharijoda	fully
13	Badapalasia	fully
14	Dhemanasole	fully
15	Kaladam	fully
16	Khandarapara	fully
17	Naubedi	fully
18	Pathuri	fully
19	Phuljhar	fully
20	Ramakadali	fully
21	Rangamatia	fully
22	Sampura	fully
23	Sanajogibandha	fully
24	Sarasposi	fully
25	Tamidisole	fully
26	B.K.C pur	affected
27	Bholabela	affected
28	Chahalapada	affected
29	Chalunia	affected
30	Gadargodi	affected
31	Jhaliamara	affected
32	Khuabuda	affected
33	Rathasole	affected
34	Saragchhida	affected
35	Tungasole	affected

Source: RPDAC, Mayurbhanj District,  
**Haladia reservoir**

Haladia Reservoir is the first command area Reservoir of Subarnarekha Irrigation Project to store the first discharge of Orissa share of water from Galudihhi barrage and provide irrigation to its ayacut in Kharif and Rabi seasons. The Dam existing at the site over the river Chipat built by the progressive and benevolent Maharaja of the princely state of Mayurbhanj, Sriram Chandra Bhanj

Deo. The construction of the dam started in the year 1887 and completed in 1912. The new dam is constructing on the downstream of the existing dam. Construction of the dam to the new height will affected 16 villages out of which only one village: Hatimada is fully submersible and 9 villages are partly submersible whereas only agricultural land is going to be submerged in rest 6 villages.

**Table 8: Details Of villages affected by the project (Haladia reservoir)**

Sl. No.	Name of the Village	No. of Families Surveyed				
		DF Identified	DF finalised	>75%	<75%	Encroached
1	Dadara	18	8	139	173	1
2	Pandasole	0	0	0	97	0
3	Baidpur	0	0	1	42	0
4	Rangisole	0	0	2	8	0
5	Kalikasple	0	0	0	7	0
6	Khairbani	166	117	167	120	0
7	Ambupunja	23	27	21	215	0

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8	Kanjia	0	0	0	42	0
9	Nodhabani	11	11	137	10	8
10	Dudhiasole	0	0	0	7	0
11	Hatimada	117	98	4	39	0
12	Haladia	6	6	21	166	0
13	Balarampur	3	3	23	89	1
14	Mundakata	20	12	72	204	0
15	Rangibeda	145	145	137	56	18
16	Karkachia	0	0	85	253	0
	Total	509	427	809	1528	28

Source: RPDAC, Mayurbhanj District

As concluded in several studies, displacement is a major factor of marginalization and impoverishment. Tribal groups living in the two project areas are all Below Poverty Line (BPL) listed families and prior to displacement they were basically dependent on agriculture, nature and community resource for livelihood. Therefore, the specific conditions of these two areas call for serious academic interest, especially on the issues like constitutional and human rights and the reshaping of public policies with response to them.

#### Land Acquisition and Judicial Trends

The socio-economic consequences of the Land Acquisition Act, 1894 has been comparatively less focus on the judicial burden imposed by this legislation. The wide interpretation of 'public purpose' and inadequate compensation filled courts across India with litigation under this legislation. On *Pune Municipal Corporation vs Harakchand Solanki*<sup>20</sup> case a three judge bench of the Supreme Court of India pronounced the very first judgment on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

A three judge bench of the Supreme Court held that compensation would only be deemed to have been deposited with the Court and after having been offered to the individual concerned. In this case, the

compensation had only been deposited in the treasury but compensation could not be deemed to have been paid and the acquisition was considered to have lapsed in consistency with Section 24 of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013".

In case of *Bharat Kumar vs State of Haryana*<sup>21</sup> on 2 February 2014, a two judge bench of the Supreme Court, pronounced a similar judgment on the new law. This judgment also associated to the operation and interpretation of Section 24(2) the retrospective clause. The bench overturned a 2004 judgment of the Punjab and Haryana High Court and quashed the acquisition, returning the land to the original owners.

On 14 March 2014 a two judge bench of the Supreme Court in *Bimla Devi vs State of Haryana*<sup>22</sup> again went into the question of retrospective operation. In this case, the award had been passed in 1995 and the parties had still not accepted compensation. On this case, the Supreme Court, relying on the retrospective clause, ordered the return of the land to the original owners.

#### Findings

The Indian Constitution, judicial decisions and different statutes like Land Acquisition Act, 1894 and The Right to

<sup>20</sup> *Pune Municipal Corporation vs Harakchana Misirimal SoLiuki*, Civil Appeal No. 877 OF 2014 (Arising out of SLP(C) No. 30283 of 2008). Reported as (2014) 3 SCC 183.

<sup>21</sup> (2014) 3 SCALE 393

<sup>22</sup> Civil Appeal No. 3871-3876 of 2014 decided on 14 March 2014.

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, relating to land acquisition in India remains scattered. The Indian Constitution just supports the concept of *eminent domain*; the procedure and other aspects of the land acquisition are left to the prudence of various administrative authorities.

The status of land acquisition and displacement scenario presents that the tribal's are most affected oustees due to dam projects in Odisha. The Constitutional as well the statutory provisions attempt to bring together the inconsistent interests of the State and the individuals in the dominion of land acquisitions, the present law is subjected to constant and passionate denigration from various quarters; especially on the land of failure to address properly the private interest; or more specifically, on the ground of failure to struck a proper balance between conflicting interests of the community and the private persons.

Land acquisition and displacement due to development projects brought about the uprooting of socio-economic, cultural and moral ethos of the tribal people's life built over generation. It has caused a great damage to the tribal people and marginalised the displaced persons to push them to the periphery of the society with losing their resource base subsistence.

#### **Conclusion and suggestion**

The international initiatives are directly or indirectly ensure the "right to land"; especially that of the indigenous peoples. Evidently, far more than any other section of humanity, and deprived tribal people legitimately look forward to the UN protection. When the international system addresses indigenous peoples' rights in a better way, the tribal people in India who form one third of the total indigenous peoples of the world, are denied the benefits of the aforesaid international norms; especially in the realm of land acquisition. The Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013, creates the impression that the Act protects the rights of all displaced persons irrespective of the statutes under which the land was acquired.

- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which is intended to repeal the Land Acquisition Act, 1894 must necessarily be changed.
- Prior to acquisition, consultation of inhabitants shall be made compulsory.
- The entire acquisition process shall be monitored by a committee comprising higher officials, experts and sufficient number of representatives of the displaced persons.
- Instead of the Collector, a new quasi-judicial authority with sufficient powers to award compensation may be constituted.
- The market value of the property has to be calculated on the basis of the value prevalent at the time when the government gets actual possession of the property.
- Pension schemes must be introduced for displaced persons, whose property has been completely taken for public purpose.
- Complaints, irregularities and omissions in lay out and plan, including classification of property, must be properly rectified by an independent authority.
- Consent of the majority of inhabitants should be sought for the acquisition of property for Government and private companies.
- In the case of purchase of land for private companies, governmental interference shall be the minimum and confined to monitoring the process.
- While undertaking resettlement measures, 'priority rule' has to be adopted: priority shall be given to those persons whose land has been acquired completely; and that too, on the basis of income levels.

