

National Conference on the Five-Year Journey of **THE RFCTLARR ACT, 2013** THE WAY FORWARD

October 25–26, 2018 | India Habitat Centre





CONTENTS

MESSAGES

DIRECTOR GENERAL, TERI

02

CHIEF EXECUTIVE OFFICER, NSDC

03

MANAGING DIRECTOR, AAI

04

MANAGING DIRECTOR, NHIDCL

05

ACTING DIRECTOR, CWDS

06

AGENDA OF NATIONAL CONFERENCE

07

CONCEPT NOTE

10

EXECUTIVE SUMMARY

13

BACKGROUND PAPERS

15

PROCEEDINGS OF THE NATIONAL CONFERENCE

25

WAY FORWARD

131



Dear Friends,

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 constitutes a significant step in the country's march towards a land acquisition regime that is grounded in transparency of processes and fairness of outcomes. While the implementation of the Act, over the course of the last five years, has decidedly resulted in a humane and participative land acquisition system, it has also seen the emergence of differing viewpoints over some substantive and procedural provisions of the Act, culminating in the Amendment of the Central Law by some states.

TERI organized a two-day national conference on 25th and 26th October 2018 to bring together various stakeholders for a discussion on the five-year journey of the Act and the future prospects. Specifically, the participants deliberated on the emergent challenges and suitable pathways for sustainable land procurement framework for industrialization, urbanization and infrastructure development.

I am happy to share the report of the proceedings of the conference. I sincerely hope that it will contribute to policy, practice and research in the area that is critical to India's economic development.

Best wishes,

Dr Ajay Mathur
Director General, TERI



Message

NSDC was set up as public private partnership entity in 2008 by the Ministry of Finance, Government of India and now works under the ambit of Ministry of Skill Development and Entrepreneurship. Its mandate is to facilitate skill training in partnership with industry and private training providers. NSDC provides funding for building scalable, for-profit, vocational initiatives across the country. NSDC has established a robust network of more than 400 Training Partners with approximately 7000 training centers across India. It is also implementing Governments' flagship schemes such as Pradhan Mantri Kaushal Vikas Yojana and Pradhan Mantri Kaushal Kendra among others.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 has brought about a paradigm shift in land acquisition process in India. Acquisition of land in a developing economy like India is essential for infrastructure development, urbanization and industrialization which have a multiplier effect on economic development. Development projects though important in the long run, create significant changes in the daily lives of local population. Land acquisition for such projects displaces many and causes loss of livelihoods in the short run, which results in resistance. **Therefore, skill development becomes very crucial for the displaced and affected persons as it is a tool to integrate them back into the labor workforce and contribute to the country's GDP.**

NSDC is undertaking both fresh skilling and is recognizing prior talent of the displaced and affected population. For example; through various industry partnerships and CSR programs, NSDC in collaboration with corporates is targeting affected communities and creating sustainable livelihood through various project in the affected areas. The aim of such projects is to provide skill training along with placements in the local industries and is also preparing them for entrepreneurship/ self-employment.

Recognition of Prior Learning (RPL) is in an important program that aids displaced persons with a skill certification resulting in higher bargaining power and more respect at the work place. Women empowerment is also an important part of the RPL conducted by NSDC through its network of training providers.

Re-skilling and creating new opportunities for re-development of their livelihood through short term skilling, long term skilling and apprenticeship programs is an endeavor towards successful rehabilitation and resettlement of the affected communities.

Mr Manish Kumar

MD & CEO, National Skill Development Corporation (NSDC)



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D.O.No. AAI/CHMN/2019

3rd January, 2019



CHAIRMAN'S MESSAGE

Government also needs to acquire land for various Public purposes including for Civil Aviation Sector as it is growing at about 17% in terms of passenger movement.

Under our Constitution, though land is a State subject but land acquisition is a concurrent subject and that is why a need was felt to put in place a transparent and flexible set of rules and regulations and to ensure its enforcement. The introduction of RFCTLARR Act, 2013 five years ago is the perfect example of it, in which land is being acquired in a most transparent manner and has set a new landmark in land Acquisition reform process in India.

The new Act has also put in place a new institutional mechanism to ensure that R&R provisions are implemented effectively as an integral part of land acquisitions.

Yes, it has completed its 5 years journey but I am also quite confident that this Act is going to set examples for safeguarding the interests of land owners and simultaneously infrastructure across the country will expand rapidly in terms of means of Air connectivity too.

(Dr. Guruprasad Mohapatra)



MESSAGE

NHIDCL is honoured by the opportunity given to us to be the part of the National Conference on the 'Five Year Journey of the RECTLARR Act, 2013 conducted on 25th and 26th October 2018 at New Delhi. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RECTLARR Act, 2013) is aimed at providing fair compensation to those, whose lands are acquired for construction of highways and bridges for the development of the country. The Act brings transparency in the process of Land Acquisition, involves communities in decision making whether their land should contribute to causes of national development and assures infrastructure and rehabilitation and resettlement of the land owners.

NHIDCL, a Public Sector Undertaking under the aegis of Ministry of Road Transport & Highways was commenced in September 2015 to construct roads in States with international borders. At present, NHIDCL has been entrusted with the task of development and improving road connectivity of over of 13,000 kms, mainly in North Eastern Region including international trade roads.

NHIDCL's primarily area of work is National Highways, for which land is acquired under NH Act, 1956, for which the benefits are at par with that provided to acquisitions under RFCTLAR Act, 2013. In some of the states where the land acquisitions had to be done through the 2013 Act, the Social Impact Assessment has been the most time taking activity. Lacks of a system of land records and formal system of transfer have nullified the benefits of the process, and the acquisitions have become a play thing of intermediaries. We have also seen abuse of the generous compensation and resettlement & rehabilitation benefits. It has also forced us to be extremely careful about the extent of fund needed for the projects.

There is a need to further fine tune the process under RFCTLAR Act, 2013 so that land acquisitions are not only fair, transparent and prompt, but also keep real beneficiaries as the primary recipient of benefits there under.

We hope that the exchange of thoughts in the seminar and the publication of the proceedings thereof would spur more nuanced discussion and action which is beneficial both to the landholder and furthers national development.

-MD, NHIDCL



Addressing Gender in the RFCTLARR Act, 2013

Centre for Women's Development Studies, New Delhi

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act (RFCTLARR), 2013 with its provisions of consent, public consultation, social impact assessment (SIA) and wider inclusion of 'project affected families' is definitely progressive. While the Act has standardized compensation and rehabilitation and resettlement awards to land owners displaced by development projects and also has provisions for others whose livelihoods are dependent on land, it has done little to address gender concerns. This is primarily as monetary compensation for the land acquired by the project would only go to those who legally have ownership rights, or whose name is in the record of rights (RoR), but women's names are seldom found there, due to exclusions with respect to inheritance despite enactment of progressive inheritance laws (Hindu Succession Amendment Act or HSA 2005).

Given this reality of lack of legal land rights and women's situation within households, in the case of land acquisition they may be adversely affected as they are pushed off family lands. As the compensation sums offered are based on market formula that emphasizes on cash/monetary settlement and do not guarantee property in equivalence, there may be many instances where project displaced family who received monetary compensation never buy back equivalent land or property. In these cases, women in the family may be more adversely affected as land and property guarantee economic support for women, particularly in cases of desertion and widowhood.

To ensure women's interests are protected in land acquisition the RFCTLARR 2013 could be amended, to include correction of land records in conformity with the HSA 2005. As part of the SIA, gender disaggregated data should be collected and socioeconomic situation of every women in all project affected families should be assessed. Rather than considering all families equally, there should be special consideration to women headed households, as well as widows and unmarried women within households. The SIA team should conduct separate consultation with all women in the designated project area and make special enquiry into land and property ownership by women and make recommendations to ensure all adult single and married women's names are included in the RoR. Further in the case of single women (widows, deserted, unmarried) it should be mandatory to restore compensation in form of immovable assets such as land and property which should be in women's names, while in case of married women the monetary compensation and any house given as part of resettlement award should be in joint names of both husband and wife.



FIVE-YEAR JOURNEY OF THE RFCTLARR ACT, 2013: THE WAY FORWARD

(25 and 26 October, 2018)

Agenda Day 1—25 October, Jacaranda, IHC

Time	Agenda
9.00 – 9.45 am	Registration
9.45 -11.00 am	Inaugural Session
9.45 – 10.00 am	Welcome Address by Dr Ajay Mathur , Director General TERI,
10.00 – 10.35 am	Opening Remarks by Dr Rajat Kathuria , Director and Chief Executive, ICRIER
10.35 – 10.45 am	Inaugural Address by Dr Naresh C Saxena , Former Secretary, Ministry of Rural Development
10.45 – 11.00 am	Release of Special Volume of the Journal of Resources, Energy and Development Vote of Thanks by Dr Preeti Jain Das , Senior Fellow, TERI
11.00 – 11.20 am	Tea break
11.20 – 1.15 pm	1 st session
	The RFCTLARR Act, 2013: State of the Law
11:20 am– 11:50 pm	Keynote address by Dr Nirmala Buch , Former Secretary, Ministry of Rural Development
11.50 - 1.00 pm	Panel discussion Panelists: Shri Anil Gupta , Executive Director (Land Management) Airports Authority of India Dr Mahesh Kumar , Federation of Indian Chambers of Commerce and Industry Shri Ravindra Shrivastava , Senior Advocate, Supreme Court Moderator: Shri H S Meena , Joint Secretary, Department of Land Resources
1.00 – 1.15 pm	Question & Answer Session

1.15 – 2.15 pm	Lunch
2:15 – 5:15 pm	2 nd Session
	Land Procurement Models: What Have We Learnt
2.15 – 2.45 pm	Keynote address by Justice Shri G B Patnaik , Former Chief Justice of Supreme Court
2:45 – 4.00 pm	Panel discussion Panelists: Shri Vinay Kumar Singh (Executive Director), National Highways and Infrastructure Development Corporation Ltd. Dr D V Giri , Secretary General, Indian Wind Turbine Manufacturers' Association Dr Meena Vidhani , Dy. Director (Planning) Delhi Development Authority Moderator: Shri Subhash Chandra , IFS, Ministry of Environment, Forest and Climate Change
4.00 – 4:15 pm	Tea Break
4:15 – 5.15 pm	Question & Answer Session
6.45 – 8.30 pm	Dinner at Badminton Court, 5 th floor, TERI

Agenda Day 2—26 October, Tamarind, IHC

Time	Agenda
9:30 am – 1:00 pm	1 st Session
	Social Impact Assessment: From Policy to Practice
9.30 – 10.00 am	Keynote address by Shri Jairam Ramesh , Member of Parliament, Rajya Sabha
10:00 – 11:00 am	Panel discussion Panelists: Dr Debrabata Samanta , Head SIA Unit, Chandragupt Institute of Management Patna Dr D Suresh , Divisional Commissioner, Gurgaon Shri V S Bisht , Executive Vice President, PTC India Financial Services Ltd. Moderator: Shri Arun Kumar , Former Secretary, Ministry of Mines
11.00 – 11.15 am	Tea break
11.15 – 1.00 pm	Question & Answer Session
1.00 – 2.00 pm	Lunch
2:00 – 4.55 pm	2 nd Session
	Rehabilitation of PAFs: Experience of Livelihood Restoration
2.00 – 2:30 pm	Keynote address by Dr K P Krishnan , Secretary, Ministry of Skill Development and Entrepreneurship

2:30 – 3:30 pm	<p>Panel discussion</p> <p>Panelists:</p> <p>Shri Mahendra Payaal, Head (RPL, Special Projects), National Skill Development Corporation</p> <p>Shri Pranay Kumar, Managing Director, Consultants for Rural Area Linked Economy (CRADLE)</p> <p>Dr Parthapriya Ghosh, Senior Development Specialist, World Bank</p> <p>Shri Aniruddha Kumar, Joint Secretary, Ministry of Power</p> <p>Moderator: Dr Prodipto Ghosh, Distinguished Fellow, TERI</p>
3:30 – 3:45 pm	Tea Break
3.45 – 4.15 pm	Question & Answer Session
4.15 – 4:45 pm	Experience sharing by participants
4.45 – 4.55 pm	Concluding Remarks by Dr Preeti Jain Das, Senior Fellow, TERI



National Conference on the **Five-Year Journey of** **THE RFCTLARR ACT, 2013** **THE WAY FORWARD**

October 25–26, 2018 | India Habitat Centre

Concept Note on National Conference Five Year Journey of The RFCTLARR Act, 2013: The Way Forward

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR Act), 2013 has created a distinctive rubric aimed at establishing a fair, participatory and transparent land acquisition regime in India. The redefining of land market for industrial and infrastructural activities, pursuant to the Act, has generated differing viewpoints and responses among various stakeholders - landowners, state government, central agencies, industry and judiciary. Even as existing institutional arrangements align with the new legislation, organizational structures are emerging in accordance with the processes and procedures stipulated in the RFCTLARR Act, 2013, The RFCTLARR (SIA and Consent), Rules 2014 and The RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan), Rules 2015. The enactment of Rules by several state governments under Section 112 read with Section 109 of The RFCTLARR Act, 2013 has smoothened the execution process but capacity-deficit of stakeholders remain an area of concern. The judicial scrutiny of the legislative action of state governments and interpretations of certain critical provisions of the law are likely to significantly impact the course of acquisition of land for public purposes. A compilation of best practices through experience-sharing of social impact assessment studies, public hearing and consent seeking, computation of cash compensation and

designing of rehabilitation and resettlement award can be a useful guide to policy formulators and practitioners.

Five years since its enactment, it has become important, in the interest of policy and practice, to examine the extent to which the stated objectives of the Act have been met, identify challenges to its implementation, comprehend the emergent land acquisition scenario and explore the approaches and strategies for a sustainable land procurement framework.

TERI proposes to organize a two-day National Conference in October, 2018 at India Habitat Centre, New Delhi for bringing together key stakeholders – Ministries, PSUs, Corporates, state revenue departments, SIA Units, SIA agencies, practitioners, academicians, NGOs, civil society members - to confer on various aspects of the implementation of The RFCTLARR Act, 2013 and deliberate on the future course of action.

Specifically, the objectives of the national conference are:

1. Critique the implementation of The RFCTLARR Act, 2013 in furthering the objectives laid down in the Preamble to the Act.
2. Discuss efficient land provisioning options for industrial and infrastructure projects.
3. Reflect upon the prevalent SIA and R&R practices to enhance capacities through experience-sharing.
4. Collate ideas and suggestions to facilitate the framing of Rules by Central and state governments in respect of the provisions of The RFCTLARR Act, 2013.

5. Foster academic interest in the area of SIA and R&R to advance policy and research.

The objectives will be achieved through four interactive sessions, spanning over two days. The session will focus on:

- Implications of judicial interpretations of provisions of The RFCTLARR Act, 2013 and enactments by state governments.
- The efficacy of different land procurement models, post 2013.
- Ground realities in assessing social impacts.
- Issues in rehabilitation through livelihood restoration.

The national conference will be an occasion for the release of the Special Issue of TERI's Journal of Resources, Energy

and Development on The RFCTLARR Act, 2013. Policy makers, practitioners, researchers and academicians have contributed Papers to the Special issue.

Expected outcomes

1. Submission of policy suggestions on each session topic to DoLR and state governments.
2. Report of conference proceedings in a TERI Journal and on TERI website for wider dissemination.
3. Conceptualization of a national platform- Land Acquisition Knowledge Management Hub.
4. Set the stage for annual deliberations and consultations among stakeholders.



EXECUTIVE SUMMARY OF NATIONAL CONFERENCE PROCEEDINGS

The two-day national conference on the 'Five Year Journey of The RFCTLARR Act, 2013: The Way Forward' organized by TERI at India Habitat Centre, New Delhi, on 25 and 26 October 2018 provided an opportunity to policy makers, Government agencies, industry, jurists, practitioners, academicians, researchers and civil society to deliberate on the experience of implementation of the new law and offer solutions to address the emergent challenges.

The talks and discussions, spanning over two days, focussed on a gamut of land issues – prevalent land use pattern in the country, centrality of land in urbanization, industrialization and infrastructure development, implications of the paradigmatic shift in the land acquisition regime, legislative action of states in pursuance of Article 254(2) of the Constitution, land revenue administration and capacities of agencies tasked with implementation of the Act.

The general consensus was that the new legislation has addressed the long-standing asymmetries of power between acquiring bodies and affected people by injecting transparency and fairness in land acquisition. The proponents of the Act pointed to its likely role in preventing land conflicts that, in the past, have bedevilled the Land Acquisition Act, 1894. Further, the justiciability of the state Amendment Acts that narrowed the scope of SIA and consent provision enshrined in The RFCTLARR

Act, 2013 was commented upon. However, there were few dissenting notes, as well. It was opined that the cost of acquisition has become prohibitive and the process has become cumbersome, which is adversely affecting the pace of economic development. A few speakers also alluded to the inordinate land price escalation and increase in the number of land transactions immediately after the issue of notification u/s 4 of the Act for the conduct of social impact assessment study. Further, attention was drawn to the duplication of activities mandated in the environment impact assessment and social impact assessment and it was suggested that a few steps, common to both, can be merged to shorten the time taken to acquire land.

Many speakers and participants dwelt on the need for land use policies at the national and state level that can provide roadmaps for sustainable application of land in consonance with the needs of industry, interests of communities, requirement of food security and Sustainable Development Goals. Repeated emphasis was placed on the need for updation and computerization of land records, it was felt that outdated and poorly managed land records create disputes and complicate the acquisition process. It was suggested that 'conclusive titling' in place of the existing regime of 'presumptive titling' would significantly reduce land-related litigation. The streamlining and strengthening of the revenue

administration was also recommended. It was stated by some speakers that the Act seeks to make the acquisition process deliberately difficult in order to encourage alternate options for land procurement – direct purchase, pooling and leasing. While these options are attracting attention, it was felt that, suitable policy and regulatory frameworks have to be created by enacting new laws and repealing or amending existing laws in states that work at cross-purposes. During the 2nd session the salient features of the Delhi Land Pooling Policy, 2018 were brought forth, issues related to leasing of land in the renewable energy sector were discussed and the procedure for diversion of forest land for non-forest purposes was explained.

Considerable attention was devoted to the provision of social impact assessment, which was characterized as the keystone of the Central Law. SIA was lauded as a valuable mechanism that guaranteed participation in and transparency of the land acquisition process, thereby, obviating the possibility of conflict at a later stage. However, the dilution of the SIA provision by the Amendment Acts of some states was regarded as a retrograde step. At the same time, the urgent need to build capacities of SIA Units, SIA agencies, district officials and acquiring bodies was underlined.

During the 4th session, the speakers conceded, and the participants concurred, that rehabilitation and resettlement of Project-Affected-Families has received insufficient attention over the years. According to Shri Hukum Singh Meena, Joint Secretary, Department of Land Resources, MoRD, approximately 85% of the involuntarily-displaced families under The Land Acquisition Act, 1894 were not properly rehabilitated or resettled. It was felt that, during the land acquisition process, attention is

largely focussed on obtaining land and handing it over to the project proponent, leaving the affected persons to their own fate. Dr. Parthapriya Ghosh, the Development Specialist from the World Bank informed the gathering that meaningful outcomes depended on making R&R activities a distinct part of the project plan with sufficient allocation of time and resources. Concern was also expressed about the largely non-productive pattern of cash compensation utilization. It was hoped that the exhaustive R&R provisions under The RFCTLARR Act, 2013 would have a beneficial impact. The need for skill development for livelihood regeneration of PAFs was emphasised. The conference also identified certain issues that need to be addressed for safeguarding the interests of various stakeholders. It was stressed that efforts were required to facilitate the exercise of women's right in land. The frequent absence of formal title in the name of tribals with respect to land over which they may have enjoyed customary rights was considered to be a major source of conflict that required a solution. It was felt that the demand for 'Right of Way' over land in linear projects cannot be dealt within the ambit of The RFCTLARR Act, 2013, an amendment to the existing legislation was required. It was strongly proposed that the unutilized land that was acquired in the years prior to the new enactment should either be returned to communities or be considered for use by industry, before opting for new acquisition.

The Q&A sessions witnessed animated discussions which was indicative of the inherently contentious nature of the topic of land expropriation. The experience-sharing by participants enriched the proceedings by providing useful insights.



National Conference on the **Five-Year Journey of** **THE RFCTLARR ACT, 2013** **THE WAY FORWARD**

October 25–26, 2018 | India Habitat Centre

Background Note on 1st session: 'The RFCTLARR Act, 2013: state of the law'

It has been five years since Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was enacted (hereinafter referred to as LARR Act). The objectives of the Act are indicated in the long title of Act itself. One of the defining features of the LARR Act is the emphasis on transparency, rehabilitation, and resettlement along with compensation. It enjoins upon the State to be fair, just, and transparent in the process of land acquisition and ensure rehabilitation and resettlement of the land owners, in addition to compensation.

Importantly, the Preamble to the Act envisages a humane, participative, and informed process to acquire land and to ensure persons affected due to the developmental compulsions are equal partners in the fruits of the development.¹

In the following note the statutory provisions which enable these objectives shall be detailed. Along with them the legislative and executive interventions since 2013 and judicial pronouncements shall also be presented to provide a holistic view of the developments that have taken place in respect to the Act.

¹ See Preamble to The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act No. 30 of 2013 available at <http://www.legislative.gov.in/sites/default/files/A2013-30.pdf> last accessed on October 09, 2018.

Participative Process

One of the foremost objective of the LARR Act is to make land acquisition process a participative exercise. The Act defines the 'Public Purpose' for which land can be acquired. The Act mandates that consent must be obtained from the land owners while acquiring land.² The acquisition of land for private companies for projects of public purpose is incumbent on the consent of 80% of land owners, consent of 70 percent of land owners is required in case of public-private partnership projects.³ However, the requirement of consent operates only if the land being acquired is for private companies or public-private partnership projects. At the same time the definition of public purpose, defined in Section 2(1,) can be extended to private companies and public-private partnership projects, thus, making the scope of acquisition wider. It helps State to leverage upon strategic partnerships with private bodies for development of infrastructural and industrial capabilities without significant intervention of State.

In order to ensure that the process is participative and transparent, the Act mandates Social Impact Assessment and a public hearing at the conclusion of the study.⁴ The purpose of Social Impact Assessment is aligned to the sustainable and participative development goals. The SIA reports must give a finding whether the project serves public purpose, the land required is the bare

² *Ibid.* Section 2 (2).

³ See Supra note 2, Section 2(2) and Section 3(i), 3(v)

⁴ See Supra note 2, Chapter II

minimum, alternate sites have been considered and it is the least displacing option. The SIA report will include details of Project –Affected –Families, the entitlements for compensation and R&R award. It must also include the Social Impact Management Plan (SIMP).The SIA report must be shared with the Affected Families in a public hearing during which their concerns and issues have to be addressed. The outcome of the public hearing must be incorporated in the final SIA report. The proceedings of public hearing must be video recorded and transcribed. The SIA report has to be appraised by an Expert Group which shall give a finding on whether the project serves public purpose and the potential benefits outweigh the social costs and adverse social impacts.

The necessity of the impact assessment report, prior to land acquisition, is an important marker of the objective of the LARR Act.⁵ It compels the State to take an informed approach towards land acquisition and, at the same time, ensure the participation of affected communities in the acquisition process from the very beginning. It also helps all the stakeholders to understand each other's concerns and collectively move towards a solution oriented approach.

This feature of the LARR Act is in sharp contrast to the previous Land Acquisition Act, 1894. The 1894 Act did not provide for any kind of assessment reports or public hearing before the acquisition process began. Although objections were invited, but only after notification to acquire land was issued.⁶ However, the LARR Act mandates that the notification to acquire land must include a statement of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment report and particulars of the Administrator appointed for rehabilitation and resettlement purposes.⁷ A complete shift in the approach of the State can be seen here: land acquisition under previous law was *fait accompli* as far as the owners of the land were concerned, whereas, under the new law all the stakeholders have a chance to take part in the acquisition process.

Compensation

The other significant aspect is the compensation for the

land acquired. The LARR Act is very categorical about the compensation that is to be awarded for loss of land, livelihoods, and any other losses that may arise due to the land acquisition and processes incidental thereto. Apart from compensation, the Act also provides for solatium and interest on the compensation amount. Solatium is an additional amount added to the compensation award and has been fixed at 100% of compensation. Similarly, an interest on the award of the compensation at the rate of 12 % per annum shall be paid for the period between the date of notification and date of actual payment of final award. The compensation for land has been fixed at four times the market value in rural lands and two times in urban areas. This ensures that substantial life sustenance resources are made available to the affected families who are displaced and help them in resurrecting their lives and livelihoods.

Rehabilitation and Resettlement

One of the marked improvements of the LARR Act over the previous Land Acquisition Act, 1894 is the shift in focus from compensation to rehabilitation and resettlement. The earlier law was solely focused on providing compensation and, in some cases, a solatium. However, in the LARR Act, the focus has shifted to rehabilitation and resettlement of the displaced persons. The SIA reports, as discussed above, must include the impact of the acquisition on the lives and livelihoods of the affected families, their community and social life, infrastructure and public utilities. This makes estimation of rehabilitation and resettlement easier. Once the impacts of the acquisition on the affected families and communities are evident, the rehabilitation and resettlement plans can be made accordingly.

Secondly, Chapter V of the LARR Act mandates that the possession of the land can be taken only after the payment of full compensation and notification of rehabilitation and resettlement award. The Collector has been made responsible to ensure that the rehabilitation and resettlement scheme for each family is completed in all respects before the families are displaced.

Thirdly, the process of preparation of rehabilitation and resettlement scheme also includes notices for public hearings and public representations. Here again the approach of the law is to ensure that the relevant stakeholders are not left out of the process and have their say in the process. This provision empowers the Project-affected-Families to raise objections, submit

⁵ There are certain exemptions that can be made by the Appropriate Governments under Section 9, however, those are to be exercised only in cases of urgency as specified in Section 40.

⁶ See Section 4 and 5A of the Land Acquisition Act, 1894 available at http://www.prsindia.org/uploads/media/Land%20Acquisition/bill1167_20080311167_The_Land_Acquisition_Act_1894.pdf last accessed on October 10, 2018.

⁷ See Supra note 2, Section 11.

claims for rehabilitation and resettlement and ensure that adverse social impacts are managed and the needs of the community are addressed.

Special provision for Schedule Tribes and Scheduled Castes

The Act states that, as far as possible, land shall not be acquired in Scheduled Areas under the Fifth Schedule of the Constitution. If acquired, it should be a demonstrable last resort. The prior consent of the concerned Gram Sabha, Panchayat or the autonomous District Councils must be obtained even if the land is sought to be acquired under the urgency clause. In case of involuntary displacement of SC and ST families, a Development Plan shall be prepared incorporating measures safeguarding their special needs and interests.

Developments, post 2013

The RFCTLARR Act, 2014 came into effect on 1.1.2014. The UPA Government that came to power in May 2014, soon felt the need to amend certain provisions of the Act, which, in its opinion, were cumbersome and stood in the way of speedy acquisition of land for industrial and infrastructure. An Ordinance was promulgated in May 2014 which, although, did not tweak the provisions of compensation, rehabilitation and resettlement, did away with the requirement for consent and social impact assessment for industrial corridors, defence projects, rural infrastructure, etc., and diluted the provision regarding the return of acquired land to the landowners, if the land remained unutilized beyond the stipulated period.

The 2014 Ordinance created a furore in the political arena and among the civil society members, forcing its withdrawal in 2015, after two re-promulgations. The Amendment Bill introduced in Parliament in Feb. 2015, to replace the Ordinance, was passed in the Lok Sabha in May, but due to the stiff opposition in the Rajya Sabha, was eventually referred to a Joint Parliamentary Committee. The report of the Committee is still pending. In August 2015, the provisions of The RFCTLARR Act, 2013 relating to the determination of compensation under the First Schedule, Rehabilitation and Resettlement under the Second Schedule and infrastructure amenities under the Third Schedule were extended to all cases of land acquisition under the 13 laws listed in Schedule IV of the Act.

Amendments by state governments

So far seven states have enacted amendments to The RFCTLARR Act, 2013. These are Tamil Nadu, Jharkhand, Gujarat, Telangana, Haryana and Maharashtra. The Amendment Act of Andhra Pradesh has received the Presidential assent and is awaiting notification. The state amendments have incorporated the changes introduced by the Central Ordinances which had lapsed in 2015. The major changes are: exemption of social impact assessment study for certain category of projects; exemption from consent requirement for projects in public-private partnership mode and by the private companies; payment of lump sum amount instead of rehabilitation and resettlement award for certain specified projects; direct purchase of land from land owners; speedy payment of compensation amount by exemption requirements of enquiry for certain projects.

It has been contended by these States that the amendments were necessitated by the delays in the land acquisition process thereby making the investment by the private sector in the developmental projects of the State non-lucrative. Further, delays in land acquisition are also stated to be hampering the growth of public infrastructure like highways, road networks, airports, new cities, smart cities, ports, affordable housing etc.

Apart from formulating the Amendment Acts, states are using the delegated legislative powers under the LARR Act, 2013 while framing Rules for land acquisition and the processes involved therein. Some states have framed Rules which are markedly different from the provisions of the LARR Act. For example, the multiplier factor of compensation for rural land in Haryana, Chhattisgarh, and Tripura has been kept at 1.00, thus reducing the compensation amount for the land owners. Further, instead of returning the unused or unutilized acquired lands to their owners, some states are transferring them to land banks. Moreover, the land return policy, in some cases, is not in consonance with the intent of the Act. Karnataka, for example, requires that the landowner must pay the appreciated value of the land to the government for getting back the land.

Judicial Pronouncements

After the LARR Act was enacted in 2013, more than 280 cases have been filed in the Supreme Court, challenging land acquisitions made under the previous law (Land Acquisition Act, 1894). 272 out of these 280 cases were

filed under Section 24 of LARR Act.⁸ Section 24 of the LARR Act mandates that in cases where land acquisition made under the Land Acquisition Act, 1894:

- a. But an award of compensation had not been made, the provisions related to compensation under the LARR Act, 2013 shall apply
- b. The acquisition under Land Acquisition Act, 1894 shall lapse if the payment of compensation has not been or the possession of land has not been taken, though the award has been made in the preceding five years of the enactment of LARR 2013.
- c. If the majority of landowners whose land was acquired under the Land Acquisition Act, 1894 have refused to accept the compensation, they shall be entitled to compensation under the LARR Act, 2013.⁹

97% of the cases before Supreme Court involved Section 24 (2), i.e., where the award was made in the preceding five years but either the possession was not taken or the compensation was not paid.¹⁰ In 83% of these cases, compensation had not been paid, in 11% neither the compensation was paid nor the possession of land taken, and in 2% cases possession of the land was not taken.¹¹ In 95% of the cases the Supreme Court ordered the earlier land acquisition proceedings to lapse, and in 2% of the cases the matter was remitted to the respective High Courts.¹² The trend in the judicial pronouncement seems to have been in favour of the land owners who lose their lands. The approach of the courts is clear from the judgment of the Andhra High Court barring

Telangana Government from purchase of land under GO 123 dated 30.7.2015. It shows that courts are not ready to let the executive trample upon the rights of the 'landless' through legislative innovations.¹³

In the case of Pune Municipal Corpn. and Anr vs Harakchand Misrimal Solanki and Others the Supreme Court held, in 2014, that compensation would be deemed to have been paid if it was first offered to the land owners and then deposited in the treasury¹⁴. However, in the case of Indore Development Authority v Shailendra (Dead) Through LRS and Others, the Supreme Court decided, in Feb., 2018, that once the compensation is tendered unconditionally, but rejected by the landowner, it is not necessary that it must be deposited in the Court and hence, proceedings under the Land Acquisition Act, 1894 cannot be construed to have lapsed. The conflicting judgements, both by three-member Bench, will have a cascading effect on pending cases. In March 2018, the issue has been referred to a Constitution Bench.

Another case of far reaching implication is the Gujarat High Court judgement of Nov., 2017 in the case of Reliance Industries Ltd. Vs Union of India wherein the Court has held that once the company had deposited the compensation amount in the government treasury, the acquisition would not lapse if the government had not paid the compensation to farmers or taken possession of the land. The appeal against the judgement is pending in Supreme Court. The outcome of the appeal will determine the fate of similar cases challenging the retrospective applicability of the new land acquisition law.

⁸ Wahi, Namita, Bhatia, Ankita (et. al), *Land Acquisition in India: A Review of Supreme Court cases 1950-2016*, Centre for Policy Research, New Delhi, 2017, pp. 37-38.

⁹ See Supra note 1, Section 24.

¹⁰ See Supra note 9, pp. 37-38.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Pune Municipal Corporation & Anr. v. Harakchand Misrimal Solanki & Ors.*, Civil Appeal no. 877 of 2014 before the Hon'ble Supreme Court.



National Conference on the **Five-Year Journey of** **THE RFCTLARR ACT, 2013** **THE WAY FORWARD**

October 25–26, 2018 | India Habitat Centre

Background Note on 2nd session: 'Land Procurement Models: what have we learnt?'

The availability of land is one of the critical factors in achieving India's targets for expansion of infrastructure, and provision of affordable housing for all in the coming decades. Further, to facilitate investments, foster innovation, build best-in-class manufacturing infrastructure and enhance skill development, through its flagship programme – 'Make in India', the Government of India is building industrial corridors across the country, to encourage foreign and domestic investment. While states are in the process of making land available under LARR Act, 2013, states are also developing other mechanisms of land procurement for industrial and development projects in the state. From 2016 onwards, several states have begun to design new means to procure land, as land acquisition processes are seen as lengthy and time consuming under the LARR Act, 2013.

The session 'Land procurement models: What have we learnt?', encourages a discussion on different models and the opportunities and challenges that each one presents. The three major models of land procurement, other than land acquisition, will be discussed – private purchase, land pooling and land leasing. These models are being used across sectors, and this session will discuss procurement models for urban development, the renewable energy (RE) sector, and the development of linear infrastructure such as roads. Key issues in changing land use categories, which can broadly be classified as forest, revenue, and private lands, will also be referred to, specifically the conversion of forest

land. Each model has its unique benefits and challenges, and the choice of one or the other is determined by both the regulatory framework created by state governments, and the specific purpose for which land is required.

I. Private Purchase

Since the enactment of the LARR Act, 2013, it is seen that the private purchase of land has gained greater popularity, considering the relatively easier process of purchasing land directly from land owners willing to sell their land. Further, the purchase of land is preferred over leasing when permanent infrastructure is required to be developed. Typically, the developer purchases land from the owners under the Transfer of Property Act, 1882. The Transfer of Property Act, 1882 provides that the right, title, or interest in an immovable property (or land) can be transferred only by a registered instrument. The Registration Act, 1908, is the primary law that regulates the registration of land related documents.

One of the major challenges of purchasing land directly is the absence of clear land titles. Nearly 67% of litigants in civil cases are approaching the judiciary for land or property related cases, mostly as a result of difficulty in establishing ownership of land. In this context, the Committee on Financial Sector Reforms (FSRC) had, in 2009, recommended moving from a presumptive to a conclusive titling system. Guaranteed title systems have been developed and adopted in countries such as Australia, New Zealand, United Kingdom, and Singapore. To improve the quality of land records, and make them more accessible, the central government introduced the Digital India Land Records Modernization Programme in 2008. The programme seeks

to achieve complete computerization of the property registration process and digitization of all land records. However, the pace of digitization of records has been slow.

II. Land Pooling

Land pooling has been used internationally for urban development in Europe, Australia, Tokyo, South Korea, Seoul and other parts of Asia. The policy is primarily used for urban development. Land Pooling and its variants are known by different names, such as land readjustment, land pooling and readjustment and land reconstitution. Typically, the concept involves amassing small rural land parcels into a large parcel, creating infrastructure on this land and returning part of the redeveloped land to owners after appropriating the costs of infrastructure and public spaces. Of the land that remains with the local town planning or state government authority, a substantial portion is reserved for setting up infrastructure such as roads, hospitals, schools and parks and establishing electricity, water and sewerage networks. The local planning or development authority usually sells the rest for financing the costs of the infrastructure and amenities.

In India, concept of land pooling was first introduced in India under the Bombay Town Planning Act, 1915 in the erstwhile Bombay Presidency. However, post 2013, several states have framed or are in the process of framing land pooling policies and schemes as a viable alternative to land acquisition. These include Andhra Pradesh, Gujarat, Haryana, Maharashtra, New Delhi, Punjab, and Tamil Nadu. A recent example of land pooling policy is that under the Andhra Pradesh Capital Region Development Authority Act, 2014 for the development of Amravati, the capital of Andhra Pradesh. After the bifurcation of Andhra Pradesh in 2014, the Government of Andhra Pradesh required large tracts of land for its new capital, Amravati. Under this model, in exchange for land, the government promised a smaller, but developed plot of land to the title holders in the future. Started in 2015, the scheme aimed to obtain 38,581 acres of land. By June 2018, the Government of Andhra Pradesh had obtained over 33,700 acres under the scheme.

III. Land Leasing

An effective land lease market can significantly benefit the economy, by making land available for industrial and other development projects, while providing source of regular income to the owner. Section 104 of the LARR Act, 2013 states that, 'Notwithstanding anything contained in this Act, the appropriate Government shall, wherever possible, be free to exercise the option of taking the land on lease, instead of acquisition'. However, in India the participation in land lease market has been found to be declining since 1970. Stringent laws related to land leasing

and transfer of ownership are argued to be the reason behind this fall (World Bank 2007). The NITI Aayog's Expert Committee on Land Leasing (2016) chaired by Dr T. Haque has recommended a model agricultural land-leasing law for adoption by the states

For the land leasing model to be a success, state governments will need to amend their tenancy laws to facilitate the entry of industry in the land market, and promote willing buyer-willing seller transactions. This can further be strengthened by simultaneously liberalizing the use of agricultural land for non-agricultural purpose. Experts observe that a potential hurdle to the land leasing reform laws is the fear among landowners that a future populist government may use the written tenancy contracts as the basis for transfer of land to the tenant. However, this can be overcome by giving land owner an indefeasible title. States such as Karnataka that have fully digitized land records and the registration system have also progressed in this direction, with a solar park being established on private lease model.

Thus, the regulatory framework and practices pertaining to land procurement are evolving, and especially after the enactment of the LARR Act, 2013, several state governments and agencies are attempting to develop new means for the fair, transparent, and just procurement of land for development. There are significant inter-state differences with some states taking the lead in innovating on this front and it is important to understand how the development of land can be enabled across states. Clearly there is new thinking, across the public and private sector, on alternate means of land procurement.

The following issues are germane to the discussion on the utility of leasing and pooling model:

1. Should each model be driven entirely by market-forces?
2. What are the safeguards against coercion, fraud and misrepresentation?
3. Would R&R benefits be available to title holders who participate in these models of land aggregation?
4. What kind of compensation and R&R benefits would be offered to families dependent on that land for livelihood?
5. How would the environmental and social risks to communities be addressed?
6. What are the measures for assuring that the intra-household allocation of compensation safeguards the interest of all family members?
7. What would be the contour of the appellate structure for dispute resolution between developer and landowner?

There is a need to consider the desirability of framing national policies on pooling and leasing, to act as a template for governments of states and Union Territories in designing sustainable procurement models.



Background Note on 3rd session: 'Social Impact Assessment: from policy to practice'

According to the Preamble of the Act, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 seeks to 'establish a humane, participative, informed and transparent process' of land acquisition in India that would lead to an improvement in the socio-economic conditions of those dispossessed of their land. These ideals are sought to be realized through the provisions of Social Impact Assessment, 'Free Prior, Informed Consent' of land owners, market-linked cash compensation and rehabilitation and resettlement of Project- Affected- Families.

Section 4 of the Act stipulates that whenever the appropriate government intends to acquire land for public purpose, a social impact assessment study will be conducted in consultation with the concerned Panchayat, Municipality or Municipal Corporation, as the case may be. To be conducted by an independent SIA agency from among the list of agencies or practitioners empanelled by the SIA Unit, the social impact assessment report is required to give its findings on whether the project serves public purpose, the extent of land required is the bare minimum, alternate sites have been considered and not found feasible and comment on the effect of the cumulative mitigation cost of adverse social impacts on the total project cost vis-a-vis the benefits of the project.

Further, the SIA team, in consultation with local elected representatives, shall estimate the number of families likely to be affected and those likely to be displaced and extent of public and private land and immovable assets that will potentially be affected. The study shall include a

socio-economic and cultural profile of the affected area and identify the nature, extent and intensity of positive and negative impacts, on the community or communities, as the case may be, along a wide range of indicators - livelihood and income, physical resources, private assets, public services and utilities, infrastructural facilities, health, culture and social cohesion. The SIA study shall, in particular, identify the vulnerable sections and examine the social impacts on these groups. Further, a Social Impact Management Plan (SIMP) listing the ameliorative measures to address the adverse impact on each component (public and community properties, livelihood, assets and infrastructure, public amenities) shall be prepared by the SIA team. At the conclusion of the study, public hearing shall be conducted in each Gram Sabha whose members are directly or indirectly affected by acquisition of land. The 'Jan Sunwai', is intended to provide complete details of the project, share the findings of the SIA study, seek feedback on the report, obtain additional information and specify the entitlement of compensation, resettlement and rehabilitation in respect of affected families. The officials of Requiring Body and the land acquisition, rehabilitation and resettlement functionaries shall be at hand to address public concerns and queries. The additional mitigation measures that the Requiring Body commits to undertake in response to the SIA study and public hearing shall be included in the final Social Impact Management Plan (SIMP) submitted to the government. The proceedings of the public hearing shall be video recorded, transcribed and submitted along with final documents. The consent of land owners shall be obtained along with the SIA study.

The SIMP will describe the institutional structures, key persons responsible for each mitigation measure and the cost and timeline for completion of each activity. The

SIA report and SIMP will be prepared and submitted in accordance with Form II and III respectively, as per The RFCTLARR (Social Impact Assessment and Consent) Rules, 2014.

Transparency has been infused in the process of social impact assessment by way of public disclosure of notification for commencement of SIA study, SIA report, SIMP and constitution of the Expert Group for appraisal of SIA report. All the SIA-related information shall be in the local language and made available in the office of Panchayats, Municipality and Municipal Corporation, as the case may be, and in the office of District Collector, Sub Divisional Magistrate and Tehsil. The information will also be published in local newspapers and uploaded on official websites. The impact study relies heavily on public participation through consultation with various stakeholders and a census or a survey of the families likely to be affected.

Furthermore, Section 6(1) of The RFCTLARR Act, 2013 mandates the uploading of Social Impact Assessment report and Social Impact Management Plan on the websites of the 'appropriate government' as one of the means of public disclosure. Section 3(e) defines 'appropriate government' variously, as the state Government or Central Government or Government of Union Territory, within whose territory the land to be acquired, is situated. It is, thus, incumbent upon the governments of states and Union Territories as well Ministries to place on their official websites, the SIA reports and the Social Impact Management Plans of projects sited in their territorial jurisdiction.

However, soon after the law came into effect on 1.1. 2014, voices began to be raised against the provision of social impact assessment which was deemed to be cumbersome and lengthy, purportedly, causing delay in the land acquisition process. The Ordinance promulgated in May 2014, and re-promulgated twice in 2015, among other things, excluded a category of projects from the purview of social impact assessment. The RFCTLARR (Amendment Bill), 2015, pending with the Joint Parliamentary Committee since May 2015, proposes to curtail the scope of SIA. The RFCTLARR Rules framed by states in accordance with Section 109 of The RFCTLARR Act, 2013 have, to varying extent, diluted the provisions of social impact assessment. The RFCTLARR (Amendment Acts) of Tamil Nadu, Gujarat, Maharashtra, Telangana, Jharkhand and Andhra Pradesh have drastically limited the scope of SIA.

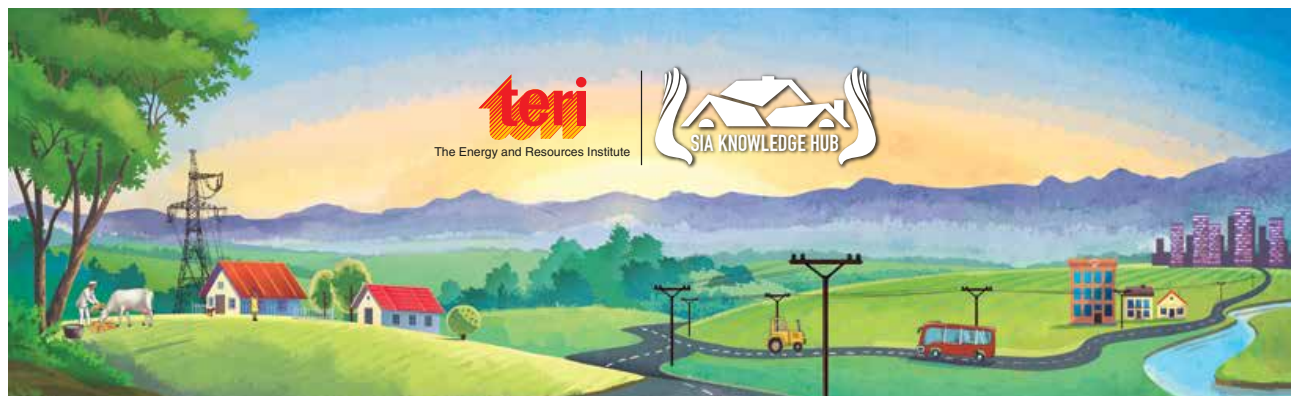
The RFCTLARR (Tamil Nadu Amendment) Act, 2014 stipulates that The RFCTLARR Act, 2013 is not applicable when land is sought to be acquired under three state laws, except for the purpose of compensation. These Acts are: The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, The Tamil Nadu Acquisition of land for Industrial Purposes Act, 1997 and The Tamil Nadu Highways

Act, 2001. Since four-fifth of land acquisition in Tamil Nadu is carried out under the aegis of the aforementioned Acts, social impact assessment is effectively precluded from land acquisition process in a majority of cases. The RFCTLARR (Amendment) Acts of Gujarat, Telangana and Maharashtra notified in 2016, 2017 and 2018 respectively, have empowered state governments to exempt projects related to national security and defence, rural infrastructure including electrification, affordable housing and housing for the poor, industrial corridors, infrastructure projects including those in public-private-partnerships from the requirement of social impact assessment. Maharashtra has further added irrigation projects and industrial area or industrial estates developed by state government to the list. The RFCTLARR (Andhra Pradesh Amendment) Bill, 2017 that has received Presidential assent in May 2018 has SIA exclusionary provisions for similar category of projects as Gujarat, and Telangana. The Jharkhand Amendment Act, 2017 has empowered the state government to exempt, in public interest, infrastructure projects including schools, colleges, universities, hospitals, panchayat buildings, anganwadi centres, rail, road, waterways, electrification projects, irrigation projects, housing for the economically weaker sections, water supply pipelines, transmission and other government buildings from the ambit of social impact assessment.

The requirement of a dedicated website for public disclosure of the entire work flow- from the notification of SIA, decision making, implementing and audit - of each case of land acquisition, as per Section 13 of The RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 has been honoured more in breach than in observance, by Ministries, states and Union Territories.

It is pertinent to consider the following issues:

1. Does limiting the affected families' and affected communities' 'Right to be Informed' and the 'Right to be Heard' undermine the objective of establishing a transparent and participative land acquisition regime?
2. In the absence of social impact assessment, what mechanism would be available to identify and address the adverse social and economic consequences of land loss to vulnerable and marginalized sections of communities?
3. Does the existing literature support the contention that SIA delays the acquisition process?
4. Have the states and Union Territories complied with the requirement for an independent organizational structure (SIA Unit) to manage and oversee SIA related activities?
5. Would the preparation of broad Terms of References for SIA in each sector, while leaving room for demographic and geographical uniqueness of each project site, facilitate standardized, quality reporting?



National Conference on the **Five-Year Journey of** **THE RFCTLARR ACT, 2013** **THE WAY FORWARD**

October 25–26, 2018 | India Habitat Centre

Background Note on 4th session: 'Rehabilitation of Project-Affected- Families: experience of livelihood restoration'

One outcome of India's tryst with development has been the large scale displacement of its population. It has been estimated that 50 million people have been involuntarily displaced in the last fifty years (Roy A, 1999)¹. Another report contends that development-induced displacement accounts for 60 million people if the number of those who lost their livelihood by virtue of their dependence on the acquired land are also included (Fernandes, 2007)². The risks most commonly associated with involuntary displacement are landlessness, homelessness, marginalization, joblessness, increased morbidity, food security, loss of access to food security and social disarticulation (Cernea. M, 1995; 1997)³.

Prior to the enactment of The RFCTLARR Act, 2013, India did not have a national law on Rehabilitation and Resettlement. Several state governments such as Haryana, Jharkhand, and Odisha, as well as some Public Sector Undertakings that required land for their business operations had framed R&R policies. However, R&R planning and execution lacked focus, resulting in unsatisfactory outcomes for the affected people. This was a result of various factors – non-involvement of displaced people in the planning and execution process, flawed planning, poor provision of basic amenities such as safe drinking water and sanitation, lack

of foresight in the choice of host communities resulting in conflicts, grant of unproductive land at new locations and the challenge of creating income generation activities.

Before a discussion of the R&R provisions of The RFCTLARR Act, 2013, it would be useful to understand the issue in its historical context.

The Land Acquisition Act, 1894

Prior to the coming into effect of the new land acquisition legislation on 1.1.2014, land was acquired under the Land Acquisition Act, 1894. The colonial law relied heavily on the Doctrine of 'Eminent Domain' to acquire land across the country, using a process shrouded in opacity that denied fair compensation to the land owners, conducted forceful evictions and ignored the need for proper relocation of displaced families or restoration of their livelihoods. In the absence of legally mandated requirement for rehabilitation and resettlement (R&R), states followed their own policies, or in their absence, court issued guidelines or project-specific schemes were adopted.

The Sardar Sarovar project, an inter-state project involving Maharashtra, Gujarat, Rajasthan and Madhya Pradesh, was the first instance where a project – specific R&R Policy was framed under The Narmada Water Disputes Tribunal Award, 1978. Clear guidelines were provided with respect to the rehabilitation villages in which oustee families were to be relocated. Further, irrigable lands and house sites for affected families had to be prepared in advance. The Narmada Control Board (NCB), in 2006 decided to adopt the National Policy on Rehabilitation and Resettlement for Project Affected Families, 2003, for all its future projects in Narmada Valley. However, the R&R efforts drew mixed response in terms of the actual benefits to the displaced.

¹ In Singh, R.S & Shrivastava, M.P, 2006. 'River Inter-Linking in India: Dream and Reality'. D&D Pvt Ltd, pp-144

² In Cernea, M & Mathur, H. M, 2008. 'Can Compensation prevent Impoverishment? Reforming Resettlement through Investment and Benefit sharing'. OUP, pp-181-207

³ In Zheng, T, 2017. 'From Landlessness to Homelessness: Exploring landless farmer's loss of belongingness after land expropriations in Urban China'. American Journal of Engineering Research, Vol-6, Issue-10, pp-281-284.

National Policy on Rehabilitation and Resettlement, 2003; National Rehabilitation and Resettlement Policy, 2007

The first national level rehabilitation policy was made in 2003 - the National Policy on Rehabilitation and Resettlement for Project Affected Families. It provided that if there was a displacement of 500 families or more in the plain areas, and 250 or more in certain specific areas such as hilly area or those falling under Schedule V and VI of the Constitution, then the District Collector would be appointed as an administrator to oversee the preparation, and implementation of an adequate rehabilitation plan for project oustees. The Policy favoured consultation with representatives of the project affected families, including women and members of elected Panchayati Raj Institutions within which the project area is located.

In 2007, the National Rehabilitation and Resettlement Policy was notified by the Ministry of Rural Development. Under this, employment or cash compensation or a one-time cash grant or financial package was available to those whose land was acquired, as decided by state governments. In lieu of employment, a monetary compensation was to be given. Through this policy, provisions were made for assessing the social impacts of the project on communities residing in the area to be acquired. The preparation of a rehabilitation plan required the consideration of the socio-cultural characteristics of the affected people. The provisions of the National Rehabilitation and Resettlement Policy, 2007 were applicable if a project affected 400 families or more in plains, and 200 or more families in tribal or hilly areas, and certain other specified areas.

R&R policies of state governments and PSU

Several public sector undertakings, state governments and project authorities had designed their own R&R policies much before the National R&R Policies were framed. For example, Coal India Ltd (CIL) had formulated its R&R policy in 1994, which was modified in 2012, by inserting the provisions of National Rehabilitation and Resettlement Policy, 2007, and the Land Acquisition Rehabilitation and Resettlement Bill, 2011. The National Thermal Power Corporation (NTPC) developed its R&R Policy in 1983, which was later revised in 2017, after adding the benefits mandated under The RFCTLARR Act, 2013. Odisha framed the 'Orissa Resettlement and Rehabilitation Policy', in 2006, prior to which it responded to problems of displacement through project specific R&R policies and plans. Haryana formulated a 'Policy for Rehabilitation and Resettlement of Land Owners-Land Acquisition Ousteess' in 2007. This policy laid down guidelines for the allotment of plots by the Haryana Urban Development Authority (HUDA) to land losers. On its part, HUDA had framed its Oustee Policy in 1987, in 2010, it adopted the provisions of the Haryana R&R policy of 2007. In 2008, Jharkhand formulated the

state R&R Policy, by incorporating the provisions of the National Rehabilitation and Resettlement Policy, 2007.

RFCTLARR Act, 2013

The RFCTLARR Act, 2013 incorporated several provisions of the aforementioned R&R policies. The Act provides that the Collector shall pass the R&R awards with respect to each affected family in accordance with the R&R entitlements mentioned in Schedule II and III of the Act. A list of 25 infrastructural facilities and amenities have been identified for provisioning in the resettlement area, to ensure a reasonable standard of living for the relocated families. The Second Schedule of the RFCTLARR Act, 2013 offers the following entitlements to the affected families (which is defined to include families whose land are acquired as well as families whose livelihood is primarily dependent on the acquired tract of land), depending on the nature of the projects: housing units, land for land (as far as possible in irrigation projects, and in lieu of compensation), offer of developed land (in case of urbanization projects), choice of one-time payment of Rs 500000/- or annuity for twenty years or employment to one family member, subsistence grants to displaced families for a period of one year etc.

Though, The RFCTLARR Act, 2013 has enacted comprehensive measures for the rehabilitation and resettlement of P-A-Fs, but this aspect of law has not quite received the attention it deserves. There are not too many stories of successful rehabilitation of affected people. For the most part, the land acquisition process is deemed to be complete, particularly from the standpoint of Project Proponents, when the possession of land is obtained. However, for uninterrupted operations, businesses would do well to win the trust and acceptance of the local communities, a significant part of which would come from restoring the income earning capacities of the affected families. With scarce resource base, limited education and inadequate skills, the tribal and rural communities affected by land acquisition require special assistance to become economically self reliant.

In this context, it is pertinent to consider the following issues:

1. What tools and processes are required to formulate and implement technically sound R&R plans to ensure that displaced families do not face unemployment, lack of access to basic services, and rising poverty levels at resettlement sites?
2. What are the inter-linkages between social and environmental impact assessments, and the R&R strategies which are formulated? How can site-specificity be incorporated into R&R plans?
3. What is the nature and extent of compliance with the R&R provisions of The RFCTLARR Act, 2013, by states and Union Territories?
4. What are the lessons to be learnt from best practices at the state level, as well as internationally on R&R?



INAUGURAL SESSION OF THE NATIONAL CONFERENCE ON THE 'FIVE YEAR JOURNEY OF THE RFCTLARR ACT, 2013: THE WAY FORWARD'

Initiating the Day One session, Ms Joyita Ghose, Associate Fellow, TERI, welcomed everyone to the two-day National Conference on the 'Five Year Journey of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: The Way Forward'. She expressed hope that the conference, over the course of two days, will take stock of the performance of the Land Acquisition Act and also try to identify emerging challenges and opportunities in the years to come.





WELCOME ADDRESS BY DR AJAY MATHUR, DG, TERI

We are all here with the common objective of looking at the performance of the fair compensation Act, which was passed five years ago. Five years have brought a lot of learning and what we want to spend these two days on, is how have we performed, what are the best practices, and can we do things better. In a sense, the second session is at the heart of the larger discussion about how we move ahead, which is about the land procurement models and what have we learnt from them. That, of course, then informs the third session, which is on social impact assessment, which is a key factor of the fair compensation Act as well as the rehabilitation of the affected persons, which will be the focus of the fourth session tomorrow. I think, we have moved a huge step forward with the Act, both in terms of how we visualize land as well as in terms of how we visualize the relationship of people with land. One of the things that brought TERI to this issue was

that land is not taken to be a major resource, though, it is increasingly becoming clear that it is the major resource, as far as this country is concerned. We are as concerned in TERI about the deteriorating quality of the land as of the quantity of land itself. Now, to a very large extent, these two days are about the quantity of land, but what I would like to suggest here is that we need to be concerned about the quality as well. And hopefully we will meet

again to discuss issues of quality, and how the quality of land can be enhanced, because, in my view the Act is also looking at the qualitative issues, though this is something we have not focused on. So, let me again welcome all of you to this conference, and I thank you all, one, the speakers for sharing their thoughts and experiences and, two, all of you for your presence in, what I hope, will be a stimulating two day conference. Thank you very much.





OPENING REMARKS BY DR RAJAT KATHURIA, CHIEF EXECUTIVE, ICRIER

Ajay, at the outset, let me thank you for inviting me here to deliver the Opening Remarks. It's a privilege to be here. Indian Council for Research on International Economic Relations (ICRIER) and TERI do a lot of work together. So, it is always a delight to work with partners.

There is no gainsay in the fact that land acquisition is extremely important to our development process and what Ajay described as, what you are going to do over the course of next two days will reflect on the progress that we have made since 2013. And I think, one of the key changes that Ajay discussed is the compensation paid to land owners, and we know that in the 1894 Act, it was biased against the landowners, sort of reversed in 2013. After a lot of things happened, including Singur and Nandigram, the LARR 2013 came into being and a lot of people argue that it went

to the other extreme. So, from being biased in favour of the colonial masters, the State, and the State authority, it went to the other extreme, to being biased in favour of the landowners. There are going to be trade-offs, there is no policy that would be, in some sense, economist like to describe in text-book, a Pareto Improvement, like everybody becomes better off. And that's unlikely to happen in practice. So, what happened, I think the experience of five years will show and does show, that the process of LA became much slower although there are exceptions that are listed in the Fourth Schedule on projects that the State can act decisively. But, in general, for industrial corridors, for Special Economic Zones, for national manufacturing zones, the process will get a little truncated and it will become a little slow because of procedures. Nobody will deny compensation, I think, compensation is an inalienable right for the landowners, you can't exploit and abuse them. There would be people who would say competitiveness of Indian industry, which is already at a low level, despite the depreciation or devaluation of exchange rate, would be affected by this large compensation and solatium payments, four

times the market value, etc. But I don't think anybody will argue, definitely, not in public but not even in private, I think nobody will grudge the increased compensation to land owners. I mean it will be difficult to do that, given the years and decades of low compensation and exploitation. I think land is a crosscutting issue, it affects everything and it's not discussed as much as it ought to be discussed. There is a reason why it should be discussed a lot more, the discourse should be much more. That reason is - we are at the stage when our development will take off, some people say that we have taken off, we have become a middle income country, although, a low middle income country. But I think the next two or three decades are going to be decisive for India, the reason being urbanization. Where is the land for urbanization going to come from, what's going to be the fate of industrial corridor, and what is going to happen to that productive land that we use for agriculture? From Independence till today, or, at least, till the point we have data, which is the 2014-15 net sown area under agriculture, has shown a trend of increase, only in the last couple of years there has been a marginal decline of the net sown area,



under agriculture, so 46% of land area of India is used for agriculture purposes. The fear is that as the development process takes off, as urbanization becomes more and more entrenched, and we know there are figures, that show that we would have 800 million people living in cities, by the year 2050. I don't remember the exact numbers, urbanization is going to be a sort of mass movement, there will be lots of migration from rural to urban areas, and then there will be areas that will be redefined as urban. Then, there will be demand for industrial projects, there will be demand for housing, there will be demand for affordable housing, etc. The fear is that instead of fallow or uncultivable land being brought under the process of urbanization, a lot of agricultural land will fall prey to this process. And, I think, we should be watchful of that, in the sense, that if we plan urbanization properly, if we plan our process faster, the amount of land that we give-up from agriculture to urbanization, can be much reduced. But if we continue business as usual, then, I am afraid, the number and amount of hectares that are brought away or taken away from agriculture and brought into industrial and urban zone will be very large. And that will be detrimental to our own interest, as a nation with 1.7 billion people by the end of century. That is going to be huge, 1.7 billion people, a workforce of 1 billion, it's a very large number. Therefore, we have to cater to food

security as well. Of course, as we have seen in the past, the Malthusian proposition doesn't always work out because of technological progress but we will need to ensure that not only agricultural productivity increases, but also the nature, the quality of land, that is brought under the process of urbanization is not productive agricultural land.

I think that's the fear and, therefore, the key, while we increase the compensation and while we do the social impact assessment, while we get prior consent from previous landowning classes, we have to look at the paradigm of development that India is going through. And that paradigm as, I said, is one, where our rates of growth will take off. If the Gods are kind enough and the stars align in our favour, we should see an eight plus percent growth, beginning as early as the next couple of years. Some people are hopeful that this rate of growth could be even higher, because, we not only need that growth for our development, we also need that growth so that, in case, the compensation for land is too high, under the current Act, then the State is able to have those resources to be able to subsidize the process of land acquisition. The thought is, in order not to harm the landowners, if you want to subsidize production, then the State needs to have adequate resources, to be able



to compensate the landowners. The State capacity, we will have to discuss, both in terms of implementation and also in terms of calculating fair values, holding those SIA and public meetings that the Act talks about. I emphasize that this is an area which has been under-appreciated and there ought to be a lot more discourse on this.

I will just conclude by saying that I spoke about urbanization but urbanization is not a process that you see in isolation. Urbanization has to be seen also in the context of industrialization. Arthur Louise, the noble laureate, talked about the turning point when you move away from agriculture much more into industrialization and urbanization. The process of urbanization is not to be seen in isolation but for the jobs for which people want to be in cities, people move to cities for jobs. And we have to create manufacturing zones, and industrial zones and for that land is extremely important. The size of India's land holdings, agricultural land holdings are so small. The size of India's manufacturing and industrial zones, when you compare them to China, they just dwarf, and the fact that China was able to use its special industrial zones and export zones to create jobs for the people that were migrating from the rural areas. Although their process was a little constrained, administered and managed, but

still they were able to create jobs in labour-intensive industries. And if we are to do the same thing, provide jobs to one million people that enter the labour force every month, that number has been disputed, but let us take it as an order of magnitude, if we had to provide jobs, then urbanization, industrialization and job creation have to be seen in context of that. That is the point I am making. If the compensation is seen to adversely affect the competitiveness of Indian industry then the GST should give enough tax revenue and non-tax revenue to the government to be able to subsidize that process, as all countries have done. The industrial policy has been a key instrument that China and Japan and Korea and, before that, everybody has used in their development process. We should not shy away from using industrial policy, we have to use it creatively and smartly under World Trade Organization (WTO) multilateralism, we have to see how we can use subsidies and instruments. But, the State has to step in, this is an area where you cannot let the market function, if not to determine prices, the State has to manage this process very well. And I think the challenges for India are much more as we take off than they were in the past. I will stop here. Thank you very much, for listening to me and thank you, Ajay, once again, for inviting me.



INAUGURAL ADDRESS BY DR N C SAXENA, FORMER SECRETARY, MINISTRY OF RURAL DEVELOPMENT

Thank you very much for this opportunity to share my views with you on land acquisition. I must admit that my views are very unorthodox on the subject and twice I tried to convince the Government to accept my views. First, as the Secretary in the Ministry of Rural Development, I prepared a note and took it to the Cabinet and it was strongly opposed by many ministers. I recall Mr Nitish Kumar, he was the Railway Minister, he was very much against what I had said. So, it was not accepted and then, years later, as a member of the National Advisory Council, I recall there was a committee set up by the Government, in which I was a member, Mr Jairam Ramesh as Minister of Rural Development,

he chaired that committee. This committee was supposed to have prepared a draft and I had very strong differences with Mr Ramesh on various issues. Ultimately he said, look here, you are not the minister I am the minister, so let me decide, so my views were again not accepted. Let me, friends, try for the third time to convince what needs to be done as regards LA.

First of all, friends what is generally not known and, which is very obvious to me, is that when land use changes from agriculture to industry, employment per unit of land goes up by 10–100 times. The general impression is that agriculture is more labour intensive than industry. But my argument is that per unit of land, employment generated is very high in industry or in non-agriculture professions, maybe urbanization, as compared to agriculture. Let me give a few examples here. We are sitting in Habitat Centre, the total area of Habitat Centre including all the buildings, restaurants, etc., is nine acres, which is about 3.5 hectares. In 3.5 hectares, only two families could do agriculture, they both would be small farmers, because, they both would have 1.75 hectares of land which is

for a small farmer. So, if we were to do agriculture on these nine acres, only two families could survive with great difficulty, but, as you can see, hundreds of people get employment in Habitat Centre and, maybe, indirect employment would be even higher. Take for instance, the India International Centre. Its total area is four acres, four acres is less than two hectares. Only one farmer could survive if he were to do agriculture on that. And again, as you know, hundreds of fellows get employment there. One hectare of land is 100m x 100m, now if you were to set up pan shop which would require only 3m x 3m, then, in 10,000 sq. mtr. land, 1000 pan shops can be set up. So, therefore, this fallacy that agriculture is more labour intensive than industry needs to be corrected. Certainly, agriculture is more labour intensive per unit of capital. If you are short on capital, do agriculture but if you are short on land, do industry, rather than agriculture. That is point number one that we have to keep in mind. The other point is, and there, I would disagree with Mr Kathuria, that if you look at the overall value of land in land acquisition or what the industry pays, land has always been just about 2%–5 % of the total cost. I would say one could go up to

10% but, generally speaking, it has never been more than 2%–5 % of the total cost. Out of that, much of this money is spent on indirect cost which doesn't go to the farmers, it goes to mafia gangs, to bureaucracy, to politicians, it is because of delays, uncertainties, court cases, etc. Hardly 1% goes to the farmers. On this I would certainly like TERI and other research organization to do a little more research, as to, in the last 10-20 years, of the total money which has been spent on setting up plants, what percentage has gone to the farmers. Let me again give a few examples here. We have all heard of POSCO; POSCO's total cost at that point of time was being shown as ₹54,000 crores. And if you look at the notes on POSCO, this would have displaced about seven hundred families. One per cent of ₹54,000 crores would be ₹540 crores, and ₹540 crores in the numerator divided by 700 families, it comes to ₹80 lakhs per family. Therefore, if you were to spend 1% of your total project cost on the farmers, each farmer would have got Rs 80 lakhs. And we all know that the Government went from ₹2 lakh to ₹11 lakhs, not beyond, therefore, the project had to be shelved. 1% would have given ₹80 lakhs to each family.

Another example, take another capital intensive industry a power plant, a thermal power plant of 4000MW. A large power plant of 4000 MW will cost about ₹25000 crores and this would require around 200 hectares of land. If you take the Indian average, each household has about 0.8 hectare of land. So 200 hectares of land means 250 families. ₹25,000 crores is the total project cost, just give 1% to the farmers, each farmer becomes a crorepati. So, the money which actually goes to the family can be easily increased many times, provided the whole process is made simpler, provided the whole process becomes such that there is no uncertainty and the land can be given to industry within few months, which serves a social purpose even if we are trying to procure/ acquire land for private sector. It promotes employment and, therefore, it serves a public purpose.

The proposal which I had prepared as Secretary, Rural Development; when I took it to industry they were very happy. I said you deposit 10% of your cost, and I promise within 3 months I will give you land. They said it is very good proposal, we would be very happy. But when the



same thing went to cabinet, I said, every farmer would get whatever is his gross production, he will get twice the amount of gross production every month. This is what I had calculated, but the Cabinet thought it was too high, and this was really not feasible, so, therefore, it was not accepted.

The third point, we should keep in mind is that most of the land needed for acquisition is in central India, it is the poorest region, has the most number of tribal people. It is also very rich in minerals and in forest wealth. Unfortunately, this is also the area where land records are in a very bad shape, historically, British were not interested in going to tribal areas, they did not keep any land records, it was ghetto region, it was undulating,

be mafia gangs, there would be all kinds of subterfuges, which industry would have to deal with. So, it is very important that we have governmental intervention, governmental intervention should lead to a win-win situation. Unfortunately, the colonial law, I would say, was a very lose situation for some, let industry get land, let government get land, let some people lose out, so that others can benefit. Of course, a large number of people do benefit when land is acquired but the locals who have to give their land, they lose out. Now, the present law is such that, I term it as lose-lose situation. We have made land acquisition very difficult, all kinds of committees have been set up, even if you want to acquire half an acre of land, you have to do social impact assessment and



agriculture was not productive, land revenue was not forthcoming, much of that area was under princely states. In princely states the administration was weak, therefore, for various reasons, the actual possession of land by tribals was never recorded. Mr Jairam Ramesh, in his book, has very clearly admitted that his objective in formulating this law was to make LA very difficult so that it would promote willing buyer-willing seller proposition. Now, willing buyer and willing seller proposition can work very well in Noida or in Punjab or in Haryana, in developed regions. It cannot work in tribal areas, first of all, the land records are in a very bad shape because tribals are not very familiar with market conditions. There is information asymmetry, and what will happen is that the poor tribals will not get compensation, since their possession has not been recorded, and then we have many laws in the tribal areas. Tribals cannot sell to non-tribals, so there would

you have to set up many committees. Then, there is an expert committee, which will go through the report of the social impact assessment, there is an R&R committee, there is a state-level committee, there is a national monitoring committee, there is an expert group, all kinds of committees have been set up in this law and a large number of NGOs will be involved in this.

In fact, in one of the articles in *The Indian Express*, also in *Business Standard*, I have said that this law is anti-farmer because of uncertainties and delays. Even if you want to acquire one acre of land it will take five years, so the file will go through 200 hands. So, it is anti-industry, it is anti-farmer, but is certainly pro-bureaucracy, and pro-civil society. Civil society will be very happy with this law, because so many committees will be set up, they will keep moving around in cars with red lights. So, this

is giving jobs to civil society and not to help farmers. One point we need to keep in mind if we are to acquire land in those areas where farmers are not very well aware about their conditions, markets are not perfect, and land records are not in a good shape then this willing buyer and willing seller proposition may work in some places but not in others. It is quite possible to have a win-win situation by simplifying the whole procedure by giving powers to the collector. In the old law, collector had all the powers, in the present law, collector has no power, everything has to go to the Chief Secretary. Why can't we delegate it, if 10–20 acres of land is to be acquired, delegate the powers to the collector, have an open meeting, decide the compensation and you can settle

is acquired the value of land goes up, in ten years it may go up by ten times to hundred times. Around Hyderabad, 20–30 years back, there were lot of wastelands available there which were sold by farmers between ₹2–₹5 lakh an acre. Now, the same land is about ₹2–₹5 crores an acre, so prices go up hundred times, farmers feel cheated. They say, look we got only two lakhs, whereas now the price is ₹2 crores.

I had suggested that in the law we should provide that whenever there is a transaction, for the first twenty years, 20% of the difference will go to the original farmer, because, the Preamble says that when the farmers' land is taken they should be made stakeholders. They would become stakeholders only when they are able to



the matter and give land to industry. In the present law, you find that certain points are very good, I am very happy that there is a consent clause, at least, it applies to non-government projects and compensation has been increased. Although, I had proposed it should be six times the market value, it is only twice in urban areas, it is four times in rural areas. But most states have not accepted, and in most states it is two-three times. What I had suggested was six times which was not accepted.

So, friends, the other problem in the law is that it doesn't give any scope for negotiations. It says the compensation would be twice the market value. The other problem is that when you do direct negotiation for land, your compensation is one time. Small farmers will get lower price, large farmers who delay giving land would get a higher price. Apart from that, as you all know, when land

benefit from the escalation in prices which takes place. Unfortunately, if you read the law it says that this will apply only when no development has taken place in that land. This means that if I am the first buyer of that land, I can just plant a few trees and say development has taken place now. So, I am free to sell and nothing will go to the original owner of that land. How to make farmers benefit from escalation is again a point which has been ignored in the present law.

The other point, friends, is that we have in central India, a lot of land that is recorded as either forest or non-forest land but is under cultivation by tribals. Now, forest land or the common forest land is not private land, therefore, there is no acquisition of that land. That land is resumed, land use would be changed, that's all, which means that no compensation would be paid. I may be using that

land for gathering minor forest produce or as habitat but I will not derive any benefit if that land is transferred to some project.

Interestingly, in the colonial period when railways were being constructed from Howrah to Delhi, farmers in Uttar Pradesh objected. They said this was common land which they used for grazing, how could the Government just acquire that land? Sometime, in 1870-1872, the colonial government passed The Waste Lands Claims Act. The law provided that, even if the wastelands were being used by the Government and the land-use changed, people who used that land for grazing or some other purpose, would be compensated. Unfortunately, sometime in the 1980s, this law was repealed. Jairam Ramesh did say that he will come up with some kind of law on this subject, but so far there is no such law, which will compensate farmer or those who are using common lands, or forest lands, except, where the forest land is covered under the Forest Rights Act. Then the Forest Rights Act provisions will apply. The total forest area in India is about 70 million hectares, so far, only 8 million hectares has been covered under the Forest Rights Act. This means that, out of the remaining 62 million hectares of forest land, if you transfer land to industry or for urbanisation, then the people who are using that land do not get any benefit. Except, if it is under Scheduled Area then, of course, consent would be necessary. The clause for taking the consent in Schedule Area or taking the consent of Gram Sabha is good. But, if it is non-schedule forest area, then again, transfer of land will not require any consent and the people do not benefit. The situation is the same with respect to the Common Areas and Common Lands, which are not forest land. There is a lot of land which is called waste land or Paramboke or Gram Sabha land, which, if applied to other uses, the traditional users will not benefit. So friends, the new Act has some good clauses, the consent clause is very good, compensation has been increased. Rehabilitation is one issue on which we will talk tomorrow, so, I am not saying anything on the R&R aspects of the law. But, because it results in delays, it is not in the interest of the farmers. The other point, which is often raised is why don't we just lease out land. Rather than acquire land, lease out to the industry. Friends, there are many problems. As you know, land is a state subject



but land acquisition is on the Concurrent List, which means the states can make a law on land acquisition, provided they take the consent of the Government of India (GoI). And GoI can make a law on land acquisition for which it has to consult with the state governments, not obtain consent, that is the constitutional position. But land is a state subject, GoI cannot make any law regarding land use or land ownership, the states have their own laws, and there are four different laws, which, I think, stand in the way of industrialization. One, in many states, land cannot be leased out, such as Uttar Pradesh, Bihar, Telangana, etc. Of course, there are states like Punjab, Haryana, Andhra Pradesh, and Tamil Nadu, where leasing is possible, but in half the states leasing is not possible. The other problem is that land-use cannot be changed in states unless you take permission from the collector or the state government, which means, if I am a farmer and I want to set up industry on my own land, I cannot do it. I need permission from the state government or from the collector, which, again, is not a very desirable law. The third constraint is, in some states like Maharashtra and Karnataka, non-agriculturists cannot buy agricultural land. We all know the case of Amitabh Bachchan, when he wanted to buy land in Nasik, he could not do so. Then, he had to say that I have land in Barabanki in Uttar Pradesh, therefore, I am an agriculturalist, thereafter he could buy land in Nasik. So, there are still states, there are laws where land cannot be bought by a non-agriculturist. The fourth constraint is that in many states, marginal and small farmers cannot sell their land. In Uttar Pradesh, if you have less than 1 to 5 acre, you cannot sell your land. If you have less than 8 acres of land in Delhi you cannot sell your land, you cannot become landless. Now, all



this made sense hundred years back, when agriculture was the only profession, but also because of various agitations, the Deccan riots of Pune, was one such factor that led to the law in Maharashtra that non-agriculturists cannot buy land. Now, I think, we should really examine the necessity of these four laws.

Lastly, friends, let me also say something on the gender issue. If you look at land ownership, you find that land is generally owned only by men and not by women. Women may be doing cultivation, men may be doing non-agricultural work, but women have, unfortunately, still not become owners of land. It so happened that I was Secretary, Revenue in Uttar Pradesh, then I was Secretary, Rural Development in Gol. So, for a long time I worked on this subject. I had this very sensitive, very honest and very good minister in Uttar Pradesh, so I went to him and I said that I want to change the law in the state. At that time, the law in Uttar Pradesh was that if a landowner died, the land would only go to his male children. I said, "Sir, I want to change this law". He said, "Saxena Saab, you can change the land ceiling to 5 acres from 18 acres, distribute all the land to poor people, I will readily say yes. But, this can never happen that women receive land, this will cause

quarrels in families, it is not right at all". So, he did not accept my suggestion that women and daughters should also inherit agricultural land. Then, as Secretary, Ministry of Rural Development, Government of India, I went to Mr Gujral, the then Prime Minister of India; I said, "Sir, I want to change this law, rather than ask the states to make any changes, we should introduce a law in Government of India, a Central Law that there can be no law which is discriminatory on gender issues and, therefore, states cannot have laws which say women cannot own agricultural land. He looked at my face and said, "Jats are not going to like it". He thought of his own constituency, Amritsar, and thought that if women were given land, he might lose election in Amritsar, so he didn't agree with my suggestion. Ultimately, friends, as a member of the National Advisory Council, I convinced Mrs Sonia Gandhi, and she said, "Fine, this is very good", and we were able to amend the Indian Succession Act in 2005. Now, there can be no state law, which is discriminatory on gender issues and, therefore, all inheritance laws must change. Unfortunately, even today many states have not changed the law, in Uttar Pradesh even today, married daughters are not legally allowed to inherit land. Unfortunately again, neither the Ministry of Rural Development nor the

Ministry of Women and Child Development have issued any circular. Why don't we have a centrally sponsored scheme, which says that, by 2030, at least 20% of land should be in daughter's names or women's names? So, friends, what I am trying to say is that the land acquisition law would benefit women only when they are the owners, and, therefore, we should also ensure that the Indian Succession Act, which was changed in 2005, is properly implemented. So, friends, I will stop here, as I have said, it is quite possible to convert the present Law, which is lose-lose, to win-win, by making it simpler, by increasing compensation, by ensuring that land is made available to industry, which, as I said, is highly labour intensive, because employment per unit of land is very high in industry rather than in agriculture.

Joyita Ghose: Thank you. I would now like to invite Dr Preeti Jain Das to deliver the vote of thanks. Ma'am is currently a Senior Fellow in TERI and also an officer of the Indian Revenue Service. She leads the work at TERI on land management and has been instrumental in conceptualizing, organizing and making this conference a reality.

Dr Preeti Jain Das, Senior Fellow, TERI: It is, indeed, my privilege to thank Dr Saxena for gracing the inaugural session and providing insights into the overall land acquisition scenario in the country. Thank you very much, sir. A special thanks to Dr Kathuria, for accepting our invitation at a very short notice, gracing the occasion, and for your comments, sir, on the land market in the country. Thank you. The two-day national conference will deliberate on the emerging land acquisition scenario in the country. It will discuss the course corrections required to ensure that the ideals enshrined in the Preamble to the Act are fulfilled. It will also look at the direction in which we are headed. The deliberations will, hopefully, contribute to policy, practice, and research. A very warm welcome to all the delegates here. I hope you will enjoy your stay at TERI and I hope you will find this conference a very enriching experience. Thank you very much.



Session 1 The RFCTLARR Act, 2013: State of the Law

Joyita Ghose: The objective of this session is to understand the extent to which the 2013 LA, Act has facilitated the availability of land for industrial and infrastructural projects and the implications of state amendment Acts, in this context. The keynote address for this session will be delivered by Dr Nirmla Buch, Former Secretary in the Ministry of Rural Development, Government of India. She has held several key policymaking positions in the Government of Madhya Pradesh as well as the Government of India. She is the Chairperson of the National Centre for Human Settlement and Environment, Bhopal, as well as the Chairperson of Mahila Chetna Manch, an organization that has done pioneering work in the field of women's rights in the country. I now invite Dr Buch to please deliver the Keynote Address.



KEYNOTE ADDRESS BY DR NIRMALA BUCH, FORMER SECRETARY, MINISTRY OF RURAL DEVELOPMENT

Friends, let me begin by thanking the organizers and TERI, for giving me an opportunity to come and share some of my experiences, more than that, learn from what you people have been doing. I will also take you from the land of think tanks, to where the action is. Because, I live in the area where action is to be taken and where the problems are. We know the LARR Act has brought a paradigm shift to the whole issue of acquiring land. Land in India is not only an economic asset, it also has sentimental value. Those who are dependent on it are dependent not only for economic reasons, but also because that's all they know, that's all what they have. And they have no opportunity to move away from them, if they

really had options, I think, they would have taken a good price for it and left. But that's not a very easy thing to do. Mr Saxena made my work easier, by raising a lot of issues. The Act, its implementation, and the changes which the state governments have made have created problems. Shri Saxena was also kind enough to bring out what was the intent in Delhi. It did appear that the law was being made more complicated than simpler. But that's how we all work. By and large, we see a problem and we find solutions, which are more complicated than the problem itself. That's what has happened with this Act, because there are problems. But it is not difficult to solve, provided we have the intention to do and we have all the knowledge.

Quite often when we talk of land, we think certain lands are available. Mr Saxena gave some information that showed that land is not available just like that. It is my contention, and I think, you can find out on the ground that if there is land which is cultivable, it is being cultivated. You may see it as government land, you may say it is forest land, it may be private land. It is being cultivated by someone. It is not available just like that unless it is non-cultivable,

even there, sometimes, people try to cultivate it, because that is where they live, that's all they know. So, when land acquisition has to take place for industry, for urbanisation and all that, the question is, how do we acquire? In the 2013 Act, it is a complete paradigm shift as to how you look at land acquisition. Earlier, it was a one-sided affair, the State wanted, the State took and the cultivator had to accept, along with all the problems of how harassed he felt, when he got compensation, the size of compensation, the manner of it, and so on and so forth. For instance, in the case of Narmada we have seen tremendous problems as far as land acquisition is concerned. It was not something which could not have been handled, but still there were a lot of problems. Now land will be acquired under the LARR Act. The good thing about it is that it creates a role for the stakeholders, namely, the farmers, to know about the acquisition, to participate in the exercise and, hopefully, to get a good compensation.

Having said it, there is lack of understanding about what needs to be done subsequently. The key factors in this law are social impact assessment and public hearing



which leads to a dialogue and sharing of information to the farmers whose lands are going to be acquired. But, many problems arise when you do the social impact assessment (SIA), when you do the public hearing because the handling of that issue is not always simple. This is because those who are handling it do not have empathy with the land losers. I am saying it with all authority because this is what I see on ground. We find that there are some organizations that conduct SIA with empathy. There are some organisations which are basically consultants not knowing what the area is, not knowing the subject and they have to produce and give what you want. So, even in SIA there is a need for institutions to know what is the purpose, how it should be done, they have to know the area where they are working and the population for which the study is being done. I have talked to some of the officers who have been handling the subject. Generally, you find there are two types of officers, those who think it is an unnecessary encumbrance, unnecessary work, it causes delays. But there are others who have found value in it. And they have found value in the whole issue of conversation, dialogue and the subsequent public hearing. Some of them had told me that when they had this talk, they found that the farmers became their partners. The officers, who do not want to talk, feel that SIA is a cumbersome process and it causes delay. Projects get delayed if you don't do the work properly. Let me give you an illustration that when

the spirit is imbibed by the officers and others, it can make a difference. There was project near Bhopal in which 28 villages would be submerged, it was very valuable land because it was very close to urban areas. The villagers said, "*Hum log toh bilkul doob jaenge*" (we will definitely drown). Some of us took up the issue and found that, it was possible to have a different option, namely, that you don't need to have a big dam, you could build barrages. The DPR was changed, now they are going to have river bed barrages instead of a dam, therefore, land was not lost. It is possible that if the spirit of the law is understood and you work accordingly and, if, those who are working with government from outside don't have their agenda of making big statement, then, I think, things can happen differently.

The same thing can happen in the case of urban development. Let me give you a different example why the spirit of this law is not always accepted. For instance, a decision was taken earlier in Madhya Pradesh that if anyone's property is acquired in the designated urban area then, instead of cash compensation, they will be given, what is called, TDRs or Transferable Development Rights, under which you can have more FARs, etc. Instead of cash compensation, a landowner will be given a piece of paper. Some of us feel that the piece of paper is not going to be very useful, unless they have a market which is possible only when there is industrialisation. If you don't have that market for it, the piece of paper will be of



no use, because the person has to sell, within, five years, or the extended time frame. I recollect when the land reforms took place in 1950s, and states made the laws for zamindari abolition, the ex-proprietors were given the bonds for 15 years or so. They sold it for 15%–20 % and got out, they were not going to wait for 15 years. But the document was valid even after 15 years, there was a capital value to it. In this case, the TDRs will not have value after 5 years. When you can construct a house or a floor illegally, why will you buy TDR? This causes a conflict between land losers and those who want to save money. If you are looking for speed, the intent of the Act will not be achieved.

I agree with Mr Saxena that time is important, how fast they can give the land to you so that you can start the project. The present Act takes a lot of time and that has to be addressed. Secondly, once their land is taken they have to be compensated quickly. A company can also give them stocks, in addition to cash. Mr Saxena rightly said that if the land is taken today and the farmer finds that the value has gone up hundred times, he/she would feel cheated, he/she should have a share in it. There can be ways of farmers getting a share in the increased price of his asset.

Secondly, there is a role for not only the officials, but also for the civil society groups. Civil society groups do very good work in giving information to the people who are

going to be affected, their rights, etc. But they should also be positive and say what can be done. Quite often, they say, "*humara kaam toh ye nahin hai baki sab aap jodo, woh yeh nahin hosakta lekin kya ho sakta hai aap nahi bateinge*" (This is not our work, we were supposed to inform you, which we did, now you join the dots). They have to become positive partners in the process, if they want to work on the side of the land losers.

I see the whole spirit of the LARR Act is participation, consent and discussion; if that spirit is imbibed, then a lot of things can be done without any problem. I know what Dr Saxena mentioned about the tribal areas, in the tribal areas also, you can do it if you want to do. Women have been given coparcenary rights in the Hindu Succession Act, but, the problem is that it remains on paper, because there is no social security. If they take the share where will they go? I am raising the issue of women being given equal rights in law but denied in practice, so that we can discuss it in this session. All the laws which are there to help vulnerable groups, face problems. In Madhya Pradesh, they did go ahead and said women will have the Right to Property. When the policy was initiated, we found that when a father died, the names of girls were not entered in succession records, because they said, "*humko nahin chahiye*" (We don't want it). We suggested that the names can be entered, if she wants to give she can give later. Now, panchayats were given the powers to give this documentation. They said, "*Hum jhagde mein nahin padte, na hum kanoon ke khilaf kaam karenge, na hum ladkiyon ko denge*" (We won't get involved in fights, neither do we want to go against the law, nor do we want to give land to girls). They walked out and then they started entering the names but, thereafter, they started giving in by registry that we don't want what our brothers should have. Because, there is no social security, if something happens what will they do. The whole issue of land is about the state of power relations, family structures and what sort of social security do people have? Therefore, women will not get the benefit which the law provides, if we do not work consistently to make them aware of the rights and also give them viable options to exercise it.

I also feel that there are those who are not very keen about this law and its implementation. They feel that efficiency and time limits are important for land



acquisition and they should go ahead with it. But, I think, there should be this distinction between clinical efficiency and effective lasting development. If you have the farmers and land losers as partners, then there will be better and lasting impact, rather than going very fast and saying that you have delivered by taking the land but subsequently face roadblocks. If, those who are on the side of clinical efficiency in promoting urban development or industrialization, also see that there are people on the other side, including women, then, I think development will be sustainable. Unfortunately, today, those who are implementing things are emphasising on being number one. But what happens beyond the quality, etc., that is not taken care of in the same way. So, the vulnerable group should be looked at in the whole process, they should be aware of what the State has given and the state personnel and the civil society groups have to work together so that the Act succeeds in its intention. At the same time, I think there is a need to look at some of the details. The LA process should be fair, faster, speedier and should be understood by all sides, so that you can have development, as well as fairness and justice for the farmers and land losers. Thank you.

Joyita Ghose: Thank you ma'am, for sharing your perspectives, and also outlining the gaps between the Act, on paper and in practise. We will now continue with the panel discussion which will be moderated by Mr H S Meena, currently Joint Secretary in the Ministry of Rural Development. The speakers for this session are Mr Anil

Gupta, Executive Director, Land Management, Airports Authority of India; Dr Mahesh Kumar of the Federation of Indian Chambers of Commerce and Industry and Mr Ravindra Shrivastava, Senior Advocate of the Supreme Court.



MR H S MEENA,
*Joint Secretary,
Department of Land
Resources,
Ministry of Rural
Development*

It is a very important and relevant topic for the development of the country. Let me give you the background of this Act and the present scenario in the country. I have been continuously working on this subject, since, I think, more than 22 years. When I joined service, then Shri N C Saxena was Director in the Academy. He has been my Guru, and he has been my trainer also. So, at the outset, I may be excused, because there are certain views which maybe contrary to the views extended by Mr N C Saxena. I have a slightly different opinion about this Act. As a collector for nine years in seven districts, I implemented this Act and the previous Act. And, as a Secretary and Principal Secretary of the Department of Revenue in the Government of Bihar from 2011-2014/15, I made certain policies on this Act, when this was implemented. From 2015 till today, I am struggling as a Joint Secretary dealing with land acquisition in the Gol.

Now, let me raise certain issues to trigger the discussion on this subject. You may be aware that land acquisition comes under the Concurrent List—Serial no. 42 of the Concurrent List—which means that the Central Government and the state legislatures are competent to enact laws. The land acquisition process is placed at Serial no. 18 and 45 of the State List, thereby Central Government cannot make any Rule, Policy or Act. Unless and until, the Central and state governments work in close coordination, it will be next to impossible to implement this Act. The Land Acquisition Act, 1894, you may be aware, was a colonial Act, so, it was government-centric. In one simple sentence—you give me your land and you get away. Whatever I am offering, you have to accept it, you have got no right to differ from the government stand—this was the earlier Act. Now, in the present Act, there are three layers of public grievances redressal system, that is—an administrator at the project level, the Rehabilitation and Resettlement Commissioner who is usually divisional commissioner or equivalent officer, then the Authority which is headed by a single judge, equivalent to the district judge. Now the question is, should we have such a long-drawn structure for the redressal of public grievances for the LA process? There are both points of view, it may delay the process of land acquisition, thereby delaying the whole development process in the country or, on the other hand, it may give a platform to the farmers, to the aggrieved person, to redress their grievances, thereby reducing the litigation cost, and the cost overrun and the time overrun of the project.



I will give you a brief overview of the status of land acquisition for projects using the current Act which will make you optimistic. I was feeling slightly depressed about this Act when I joined as a Joint Secretary of this Department. But after collecting field data, I am quite positive. Two months ago, I collected data about the land acquired under this Act and the previous Act, over six month period, and I will tell you that the land acquired under this Act was four to five times more than the earlier Act. So, it is not that this Act is difficult, complex and delays land acquisition for the development projects.

Second, this Act has certain features, different from the earlier Act. First, it is consultative, democratic, transparent, and it has a mechanism to fix accountability. Officers may be prosecuted for lapses under Section-85-90 of this Act, starting from the lowest functionary to the highest functionary that is, from Patwari to the Secretary. The big question is, whether the Secretary should be punished for the omission and commission of the Patwari or the Tehsildar or the collector. We have calculated the time period and we have prescribed a table which is available on the website of the Department. If you allow the maximum permissible time, then the total time required to acquire land using the normal process is 59 months for any LA project. There are certain assumptions, that the project is very large, involves huge displacement of population and Rehabilitation and Resettlement packages and making provisions for land for land. If you take all these parameters then the maximum time period, required to acquire a land for any project, any project means power project, irrigation project is 59 months, that is the maximum permissible. However, the average time taken by the state governments and central agencies are 18–20 months, while the average time period, using the previous Act was 24–27 months. So, it is not that this Act is very difficult, although there are certain complexities, omissions, and difficulties in implementation of this Act. Out of the three years that I have spent in DoLR, two years have been spent in the Department of Legal Affairs, for consultations about the provision of this Act. You might have heard there is a difference of opinion even in the Honourable Supreme Court. You might have heard that in Pune Municipal Corporation case, in the interpretation of Section 24(2), the stay period has been excluded from



the counting of the five years. The Bench stated that since the person has gone to court for his own benefit, so the stay period should be excluded from the five years. In the Indore Municipal Corporation case, the three Judges' bench of the Honourable Supreme Court have said that the stay period should be included in the five years. So, it is slightly difficult for a common man, for ordinary officers who are working in the field, who are working at state level, to interpret such difficult Sections.

So far we have received seven amendments from the seven states. I will tell you that none of the states have come for amendment of the provisions, other than Section 24(2) and for the monetization of the Rehabilitation and Resettlement packages. These are the two areas where most of the states feel that there are difficulties in implementation of the Act, otherwise, as far as timelines are concerned, they don't have any problems.

Out of the seven states, five proposed amendment in Section 24(2). It means that the administrative machinery has grossly misused their power; this means you have not completed the LA process, especially the award, and payment of compensation to the farmers, even during the five years. This Act has provided an exemption of five year period for ongoing land acquisition, after which the provisions of this Act will be applicable. If you have not completed the LA process including the preparation of the award and paying of the compensation to the farmers, within five years, you can very well imagine the fate of the farmers and their families. Suppose, we are told by the state government, by the respective government or the respective authority that, "you work, but you will not be given salary for five years?" What will happen to our family and our dependents in such a case? For the farmer, the compensation, the agricultural production is his income. It has been seen that in most cases, in the past, compensation, rehabilitation, resettlement packages have been not provided. This is because there was no compulsion in the 1894 Act. In the present Act, Section 38 says that, without providing the Rehabilitation and Resettlement Development Plan which the project-affected families have to accept in writing, you cannot displace them. We have collected data for the 1894 Act which shows that, out of the total displaced families, about 85% of the Project-Affected-Families were not rehabilitated, 96% of whom were tribals. Now the question arises whether we should have such a comprehensive Act, or we should go for a legislation which is very simple and similar to the earlier one? Because of the problem in the implementation of the previous Act, especially for the R&R of the farmers, this Act is so detailed. I have not seen even a single Act wherein the Circular of a Ministry has been referred to. If you see the definition of public purpose in Section

2 of this Act, there is a reference to a Circular from the Department of Economic Affairs.

So, the framers of this document have tried to articulate everything clearly and curtail subjectivity of the bureaucrats in the field, who are primarily responsible for the implementation of this Act. Another problem is that the provisions of Schedule I, II, III of this Act have been made applicable to 13 Central Laws, which are mentioned in Schedule-IV of the Act. In Schedule I, II, III, there are certain provisions which are to be notified by the 'appropriate government', but since land is being acquired using other Acts, such as The National Highways Act or The Coal Bearing Act, etc., the question arises as to who is the 'appropriate government'? Whether it is the 'appropriate government' mentioned in the Central Act, which is primarily responsible for LA or the 'appropriate government', which is mentioned in Schedule I, II, III of this Act. These issues have been primarily addressed and Ministries have been informed accordingly. We are now encouraging the state governments to come to us for amendments or suggestions, in case of difficulty. Now most of the state governments are comfortable with the Law. I think most of the doubts have been clarified and now the process of LA has picked up. I will try to verify after collecting the data. But, as I have experienced, most of the institutions, that are primarily responsible for the implementation of this Act, or Schedule I, II, III, in case of Central Ministries, lack capacity. This Act is not as simple as the previous one, so it requires a lot of capacity building, especially for the frontline functionaries, who

are responsible for preparing the award, payment of compensation and acquiring the land. Because there are certain issues, about which one has to be very clear before you start the LA. Earlier, Project-Affected-Families were defined as the loser of the land, now there are three categories—the land losers, the agriculture labour and the service providers like carpenters, blacksmiths, etc. It is very difficult to even identify the particular labour who has been primarily working on a particular field, which is subject to acquisition. So, unless and until there is comprehensive and intensive capacity building of officers in the field, it would be highly difficult to understand or comprehend the various provisions of this Act and implement them in the field. Because, if you misinterpret any provision of the Act, I think it has huge financial implications. It may seem to be an exaggeration but it is a fact that this Act is much simpler than the previous Act. In the previous Act, there was a lot of subjectivity resulting in large number of litigation. In this Act, the civil courts are barred from entertaining any litigation, only High Courts and the Honourable Supreme Court can entertain appeals. Now, the litigation cost and litigation time will be less, if you implement in true spirit. This Act provides a complete guide to officers, there is no scope for subjectivity.

MR ANIL KUMAR GUPTA,
Executive Director, Airports Authority of India

I come from the Airports Authority of India (AAI). I will try to give you a brief account of what we are doing in



the aviation sector, and how the provisions of the new LA Act are impacting the whole aviation sector, because Airports are now being developed not only by AAI, states are also coming forward to develop the airports. AAI, as you may be aware, is a statutory authority created by the Act of Parliament. We don't acquire the land ourselves for developing airports. The Central Government or state governments transfer the land to AAI. And, whatever land is required for future developments, that is acquired by the state governments and passed on to the AAI on free-of-cost basis.

The basic idea for doing this was that projects for airport development itself are very capital intensive, like power plant. And, the aviation projects have to be taken as economic drivers. So, the states were willing to come forth for providing land to the AAI. Earlier, we did not face so many issues in acquiring the land. As of now, AAI has about 56,000 acres of land, probably, after the railways and defence, we are the third largest owners of land. About 80% of the land is operational area, about 10% of the land is on the terminal side, which we call the city side. We are trying to develop it for the commercial purposes also, as the Railways are trying to do, so as to cross-subsidize the cost of travel.

The basic idea is to make aviation available to all the people, so the cross subsidy has to happen. We are aiming to continue with the same growth rate in the next ten years, as we have seen in the last 5 years or 10 years, we have grown by about 17%–18%. You must have seen that most of the airports are getting choked, even after lots of development and investment. In the case of Delhi, as of today, we are handling more than 65 million passengers, growth is 18%, it looks good but is difficult to manage. If it happens continuously for 4 years, your whole plan goes bust.

Now, we are coming up with a second airport at Jewar also. The point that I would like to bring to the table is, for a project of the magnitude of a second international airport, the cost of LA is becoming huge. Probably, it is because the airport is in the urban area. The new Act has also played a role in increasing the cost. As sir was mentioning, the land cost in a project should be in the range of about, say 5%, at the maximum. Just to give



a brief idea, in case of Jewar project, the land cost is coming to around ₹4000 crores in Phase I. And the cost of construction would not be more than ₹500 crores. How do you make the project sustainable? Because, the ultimate aim is somebody who is putting in the money, the state government or the Central Government, or a PPP developer, must earn profit. A PPP developer is not going to invest money for the land. Then, how does the state government get the money? Does the state government have that kind of money, to cross subsidize in the times to come? Policymakers would have to think about how to bring the land. Unless land is provided, airports cannot be built. We require not less than 1000 acres of land for an airport, ideally it should be 2000–3000 acres of land. Everybody wants an airport not more than half an hour from the place where he stays.

Right now we are building airports in 5 cities, second airports are coming in Delhi and Mumbai. Chennai is on the threshold, Pune is already there, we are looking at Kolkata, but there is no land. The way the state governments are aligned, it is becoming very difficult to acquire land. So, we have to really think about the provisions of the LA Act, so that land is made available. In the last budget, the Government of India has disclosed its vision for the aviation sector to grow by 4 times the present passenger numbers in the next ten years, under the Nav Nirman Yojana. So, we are looking at 1 billion tickets to be sold in the next ten years. Ultimately, two trillion would be invested in the aviation sector by different stakeholders. If the cost of the land itself is going to be 40% or 30%, it is not going to be feasible. I am just bringing out the issues facing us, it is not directly

related to the LA Act but, definitely it touches upon it. If the GDP is growing at 8%, the passenger numbers will definitely grow by 12%, so to manage 12% growth will be a challenge.

Now, I will just touch upon the challenges which we have been facing in respect of land acquisition. One of the things, that I mentioned, is the huge cost. My senior colleague just made a mention about Section 24(2), it is also impacting us in many ways because, in certain places, AAI has also acquired land. An airport is developed in a phased manner, like the Delhi Airport, where we acquired the land in 1960s. At that point of time, 5000 acres of land was acquired, that is the reason why we are able to expand today, otherwise, this airport would have been closed 10 years earlier. We have used 2000–3000 acre, we are now going to build four runways here, then it will be able to sustain up to 2035. The point is that Section 24(2) is also impacting us, because part of the development happens after a five year period also. There is also Section 101 which mentions that development has to happen within five years of acquisition. We would like exemption from this provision. I think we have already placed it before the Committee which has been set up for the Amendment Bill, it will be good if the Government decides to exempt us from these stringent provisions. Ultimately, we need to have land, if today we have 2000 acres at one place, later, I cannot have land at some other place, like a factory or an

industry. I require contiguous land, which is a challenge for the airports.

The other challenge is that, at a few airports developed in the last 5 years, rehabilitation and resettlement is becoming an issue. We pay the rehabilitation costs to state governments but they have not rehabilitated the people. Now, with the new Act coming into force, the cost of rehabilitation has once again increased by three times.

This is the reason we are not committing to the state governments that we would bear the R&R cost, because we do not know what would be the ultimate cost. So, we try to impress upon the state governments to provide us the land, free of cost and free of all encumbrances. Let us know upfront what is going to be the total expenditure, so that we can budget our provisions, accordingly.

As Mr Meena mentioned, things are improving. Once the Act has been established, we can look for few amendments. The entire Act will not change because it has come after much consultation at the legislature and bureaucratic levels. So we'll have to live with it and find some ways to mitigate those 2–3 issues which I have mentioned.

Rather, I would say there are certain benefits from the new Act. Under the emergency clause, we have been able to negotiate certain lands very quickly. At one of the



locations we were able to acquire the land in 6 months, although, we paid a higher price. So, we agreed to pay that price, but we were able to acquire that land in 6 months' time, which would have normally taken two or three years.

Now, you would appreciate that as the airports develop, there is an all-round economic development. As sir was mentioning, paying two or four times is also not sufficient in many cases. We have decided that we will go for the land pooling policy in developing a few airports. So that we make the landowners truly a stakeholder, try to bring in their land, definitely, we will give them some employment as well. But let them also progress and become a partner in development. Certain governments allow pooling, for instance, the Gujarat government allows land pooling in a very good way, so we are trying to do it in that manner. Maharashtra also allows land

a partner in the profit that may accrue at a later date. That is the idea, which we are trying to explore, and if our intent is to build 100 more airports in the next ten years, we will have to look for some innovative solutions. The way the conventional things happened, this will not take place, because ultimately people would like to be benefitted. And as a GoI organization, our idea is, if some development is happening, it is not only we who should prosper, it is the whole system, the economy in and around that area, region or the state that should also prosper. So land pooling is an idea that we are looking at. During the discussions in the course of these two days, probably a few more ideas would come up and we would be very receptive as is our team here. With these words, I conclude.

Mr Meena: Thank you very much. He has referred to Section 101 regarding the requirement to use the



pooling. We are doing a study, probably we will approach the GoI about how to undertake land pooling. Because, Andhra Pradesh has done it, we tried to do it for the new Boggapuram airport as well. That is the only way we can bring landowners together and try to reduce the cost at the initial stage. And let them be partner, if we let the airports develop, the economy develops. As was mentioned earlier in the day, the land prices would increase by ten times, by paying two times today, we can make the farmers or the landowners agree. Let them be

land within five years of acquisition. The definition of 'development of land' defined in the Rules framed for the Union Territories (UTs) says that if the Department has made provision in the budget, money has been provided to the officers who are implementing the project, that is to be taken as compliance of the law. Section 26(5) says that, within two months of the notification under Section 11(1) you have update the circle rate. Recently, land owners have filed a case in the honourable High Court of Gujarat that circle rate have not been revised since 2011.



DR MAHESH KUMAR,
*Federation of Indian Chambers of
Commerce and Industry*

I am speaking on behalf of Federation of Indian Chambers of Commerce and Industry (FICCI), for the implementation concerns of this Act of 2013, which we are implementing since 1 January, 2014. The earlier Act was almost 119 years old and it was a colonial Act. But we have to visualise two things now. As per the old Act, we could acquire the land in, say, a maximum period of 36–39 months. As per the new Act, we are taking almost 54–60 months. In a democracy we have a government for sixty months and if we keep acquiring land for 60 months we all know how things keep changing after every 60 months when government changes. That perspective has to be kept in mind, we all agree, on one basic premise that the pace of acquisition has slowed down. And concerns are expressed by various state governments, as well as, various departments regarding the new provisions, complexities of the new Act and difficulties being faced because of this new Act, and we can't overlook all those things.

I will just be flagging few issues, which are really hampering the whole system because of implementation. We all know that the country's economy is bound to achieve momentum with the passage of time, and how the country will be affected, how the economy will be affected, how the gross domestic product (GDP) will be

affected because of the slow acquisition of land. This is a highly politically-sensitive issue and the present Central Government has also been weighing its political options. If we really go to the keywords of the Act, take for instance, the public purpose, the list is so comprehensive it practically covers all the LA requirements. They talk about the affected family, as per Section 3(c), it covers even the affected family having land to the decimal place. There is a misuse of this provision, leading people to divide their land artificially into small pieces and selling them through organised network, thereby, increasing R&R costs.

Adversely affected families have to be defined appropriately. Scheduled Areas are covered by Section 3(zd) but it doesn't cover the tribal areas of the North East region which is very important for us. Involuntary displacement has been left undefined. R&R has been covered in such a way that they are either very lengthy to implement or tedious to implement; I will tell you how. This Act mandates for a social impact assessment prior to initiation of LA. Dear friends, you all know, how the revenue system of the Gol has been inefficient, no mutations, no transfer of land on the papers. It's the most rotten organisation of the Gol, the Revenue Department. The senior IAS officers may excuse me for being slightly harsh. You want to start the social impact assessment before initiation of LA, and in this process, you have to call all the landowners and you don't know who the landowners are. Say, if you leave some landowners in between and you carry out the whole process for months and months together, then again there is a cycle repetition.

Friends, do you know, that in tribal-dominated areas, accurate estimation of land has not been done since 1912. How would you acquire the land and how would you carry out the social impact assessment? Then, consent of landowners is another big challenge for everybody. Then, the social impact management plan is required. I fail to understand that when we have environment impact assessment, was this social impact assessment really necessary? You know how many public hearings are taking place? For social impact assessment we have two public hearings. Six public consultations are the mandatory part of EIA and, subsequent to that, the Ministry of Environment, Forest and Climate Change



(MoEFCC) comes in. Then, hearing takes place as per the Forest Rights Act, so multiple hearings are conducted. This is how things are moving. We want to build the highway in two years but we cannot acquire the land in five years. What sort of an Act is it? We want to have the construction for Asian Games within two years but we are not able to take decision for five to six years. So there is a need for a lot of improvement in this Act. Then, the creation of SIA Units has become a substantial challenge. Then there are different yardsticks for SIA, for instance, for irrigation projects there is no social impact assessment but you will conduct the EIA. Similarly, a copy of SIA report has to be made available to the EIA Authority. Till SIA is not completed, you cannot move to EIA, so it is taking almost double the time. If I visualise from the project concept to site implementation, there are 12 cycles and steps. With the kind of working in the government, you cannot presume how much time it is going to take.

Subsequently, if you see the flow chart for diversion of forestland, there are seven steps and in-between there are other back references around those things. So, we need to re-look at the whole Act. We need to bring out ordinances as fast as possible. It's a good Act, the spirit is good, but the implementation methodology needs

to be changed. Then there is the problem of multi-crop irrigated land; there are 8 states, which have brought all these conditions in a different way. Let us understand and analyse, one of my senior lawyer friend is here, why maximum litigations have occurred in the past two years, maybe, because of Section 24 of the Act. Why we cannot bring out ordinances for this, and save the human resources and save the human hours.

Similarly, Section-26 deals with market value. At multiple places there are inflating market values now. The property dealer mafia has come out with inclusion of highest value sale deeds, in a short span of time, thereby notionally inflating the market value, for determination of rates, and subsequently, rich are getting richer. There is a cumbersome procedure for preparing the R&R Award and there are 28 steps that need to be filled, for a bigger landowner, even for a small landowner. Then the multiplication factor for rural areas, some states have adopted 2, another state has adopted 1.1, and another state 1. Is it fair? Two states having the same boundary, here you are getting two, there you are getting one. It is highly unfair.

In conclusion, I must say that the efforts and objectives for the enactment of the new Act are well appreciated.

However, the implementation of law is more important than just the creation of legal policies. The concerns raised are genuine and are faced by many organisations. These need to be examined and appropriate ordinances need to be brought out in the shortest possible time. The policymakers may do well to address these concerns, to create a win-win situation for everybody, it would be an earnest wish that this Act becomes a working document that facilitates and contributes to overall socio-economic growth of the country and, particularly, its citizens.

Mr H S Meena: Thank you Maheshji. Maheshji has largely talked about the time period of the old Act, and the new Act, he has concerns on the pace of land acquisition and SIAs, Schedule Areas, then forests, the conversion of forest land for non-forest purpose and the preparation of the Award and Sections 24(2) and 26, especially, the inflation in the market value in order to get higher compensation and Award. As a district Collector of several districts, I have also acquired land for thousands of projects, you tell me a single project in the previous Act where you have not conducted SIA. Although, it was not a part of the Act, but it was next to impossible to acquire land unless and until you assess the Project-Displaced-Families, the likely resistance in the field, the infrastructure. But there is a difference, earlier it was optional, it was at the *marzi* (will) of officer, he could do at his own will, now there is a compulsion. From the date of notification, you have to complete SIA within six months, that is the only difference. Regarding Section 26, I have clearly mentioned in the definition that during the SIA, if middlemen or mafia

try to artificially inflate the unit rate of the land in order to defeat the provision of this Act, the Collector has the right to discard those values. I have mentioned what is the meaning of the inflation rate, that wherever there is a difference of 10%, from the average, there should be an inquiry in the field because from the date of notification of SIA, to the date when you actually calculate the market value, there is a time lag of approximately 10–12 months. During that period, it is possible that the mafias, the middlemen, and the non-farmers will try to manipulate the things in such a way that they can get profit. The collector has been given the power to stop the registration. The collector has got ample power under Section 71 to conduct an inquiry and stop registration of a particular area for the time being. In order to actually avoid those situations, the first step is to approach the collector and apprise him about the likely project which is coming in that particular area, he will issue written instructions to the sub-registrar that unless and until it is urgent and required in the interest of the farmer, he should not allow registration of land in that area. You cannot have a uniform multiplication factor across the country, you cannot have the same multiplication factor for Delhi and Uttar Pradesh and same for Rajasthan, for example, Jaisalmer. The basic spirit of multiplication factor is to compensate for the difference between the circle rate and market rate. He has apprised about the difficulties which the industries are facing in acquiring the land. Thank you very much. Now, I would request Shrivastava ji to give his views about the litigation aspect of this Act.





MR RAVINDRA SHRIVASTAVA, *Senior Advocate, Supreme Court*

I wish to thank the organisers for organising this seminar which is most appropriate, it calls for a review, after five years of the working of the Act. A bigger thanks to them for inviting me to be a part of this seminar and I will take this opportunity to place my views. The organisers have asked me to speak about a limited aspect of the issue and within a limited time. That aspect is litigation, which either has arisen, or is likely to arise because it has the potential to arise.

As has been told now, seven states have come forward to make amendments in the Act, in purported exercise of their legislative power. As Mr Meena has already enlightened us that this subject falls in the Concurrent List and the states are claiming that they have the power to legislate, after obtaining the assent of the President. I will address this issue a little later. If the answer is whether these state legislations, which are seen as diluting or tinkering with the framework of 2013 Act can be challenged or not, my answer is very clear. Yes, it can be challenged. Perhaps, all that you require is to have the resources to engage good lawyers in the court. And, you know from your experience of reading the newspapers and watching the television these days, anything and everything can be brought to the court, it can be challenged.

If you want to know what would be the prospect of such a challenge, if your interest is to know the sustainability of such challenge, I am sorry, I am totally helpless. I cannot say as to what would be the outcome of the challenge, because, our experience shows that the courts these days are neither predictable nor are consistent. It's a legislation which was called for, with the evolution of the democracy in the country, the economic development and prosperity of the people, which is the aim of any welfare government.

The Act has a long title, it has a Preamble which has pieced everything about the key features of the 2013 Act. And, it is very unique. The 1894 Act was a colonial Act and it was enacted in a particular context by the British Government. As Mr. Meena has very rightly said that it was very government-centric, it was a unilateral exercise. All that you needed to do is to issue a notification claiming a particular purpose to be a public purpose, which, of course, has a semblance of a public purpose, complying with the procedure of the Act. Two notifications were required under Section 4 and Section 6. Section 5 of the Act contemplated inquiry which was conducted some times, objections were sought, those were reviewed, sometimes, they were not gone through, invoking the urgency provisions of Section 17. Urgency provision was a very subjective exercise of power and then, there was an award, possession was taken and the people languished, waiting for compensation money. My experience as a lawyer has been that, many times, even the possession was taken without initiating the land acquisition proceedings, under some statute. That was the kind of authority which the government exercised. It was only giving rise to unrest and dissatisfaction. And there had been very violent agitations also, costing life and damage to property. Mrs Buch has emphasized and, very rightly, that the key aspect of this Act is to make it participative and inclusive. Very often, the problem is of economic rights versus property rights. Many of us would know about the doctrine of 'Eminent Domain', in the legal parlance, it means the ruler, king or the Crown or Government of the day has absolute power to take back the land from the subject. All that is required to say is that there is a public purpose and you would be paid compensation for it, of course, fair compensation. So,



there has been a conflict between the two competing aspects of the same object, namely, development, where there is the economic rights and the property rights. Of course, the property rights of the individuals will have to give way to economic development and that has to take precedence. But that would lead to a lot of dissatisfaction, people will think that a fair procedure has not been adopted, there has been arbitrary exercise of power. The Act of 2013, and, I must comment those who were involved in the drafting gave it deep thought, they have put in tremendous amount of industry, it has certain basic features. In constitutional parlance, we have been calling the important, very untouchable features of the Constitution as basic features. Likewise, I also find that in the Preamble to the Act, there are basic features, which are fundamental to the scheme and the frame of this Act. And those are a consultative exercise, because consultations are required with the local bodies and a participative exercise with the landowners and the affected families. The process has to be transparent, it has to be fair, the compensation has to be paid, there has to be compulsory R&R. The Preamble states that the cumulative outcome of all these things would be to produce a project for implementation which has been largely accepted by people of the local area or the concerned area and can be easily implemented because they would realise that this is something which is coming up for their own good. As Mr Meena has said that SIA is not something new, he is quite right. I have done a lot of cases where land was acquired for projects, for the power plants, and for other industries. Whenever a request came, either from the company, land beneficiary or even the government agencies, an internal exercise

was always undertaken to examine the feasibility of LA with least hindrance, with least disturbance to the people, without causing much unrest and dissatisfaction. Otherwise, it was impossible, because, if the authorities went to the spot, there would be agitation with hundreds and thousands of people resisting and nothing can be done. So, some sort of participative process was in place. Under this Act, it has now been made mandatory. There are two provisions, I am limiting my address only to those two situations, where the acquisition is sought to be made for public purpose for private–public partnership (PPP) or for private companies. The extent of that consent has been defined, in the first proviso to Section 2(2), 70% in the first case and 80% in the second case. It appears these are considered as a very serious obstacle by certain segment of the stakeholders in implementation of the Act. The other requirement of a mandatory nature is the determination of social impact assessment and the determination of public purpose. The third is with regard to food security. Multi-crop irrigated land would only be acquired as a last resort with adequate safeguards.

I am very shocked to find that within five months of the implementation of this Act, the Central Government came up with an Ordinance and for what? For doing away with the requirement for obtaining consent and for whom-PPP and for private companies, complete annihilation, so, if there is a public–private partnership model, there is some public purpose, then you are not required to take consent of the landowners, it is a total exemption. Similarly, by introducing Section 10(a), through an ordinance, it empowered the state government, at their discretion, to exempt projects from SIA and



determination of public purpose and also, the provisions of Chapter 3 related to food security. Nobody doubts the power of the Parliament or the very limited and rarely exercisable authority of the President or the Governor to promulgate an ordinance, which is an executive Act. But the question is, what was the background for this, what were their thoughts and was the time period of five months' enough? I don't think the Act was even given a fair chance to work it out itself. I am absolutely convinced that it was only a demand of certain section of the people who thought that the Act was a hindrance. And, thereafter, repeated promulgations of the ordinance took place, till the matter landed in the Supreme Court. Thereafter, the Amendment Bill was introduced in the Lok Sabha, it was supported by the majority and, we know how the Parliament functions. It was passed in the Lok Sabha, I am not aware how much discussion took place on the subject, but, yes, it went through. It came to Rajya Sabha, where it faced a lot of problems and had to be referred to a Joint Committee of the Parliament, sometime in 2015-16. The Parliament is still seized of the matter, whether or not Section 2(2) should be amended to dispense with the requirement of consent and whether Section 10(a) should really be in the present form, with total exemption or with some conditions. When it did not get through the Rajya Sabha, a club of states were advised to exercise their legislative power of amendment, the matter

being in the Concurrent List, after taking the assent of the President. We see three or four states with Gujarat taking the lead, Telangana, Andhra Pradesh, Maharashtra, or some other states have just copied and pasted the ordinance. Section-2(2) is verbatim, without change in comma or full stop while Section 10(a) is absolutely verbatim. Other provisions with regard to the involuntary acquisition, payment of lump sum amount, even the 58% of the compensation that is payable is all verbatim and the President was pleased to give his assent. We are not aware how the assent of the President was sought, the level of consideration by the President and the quality and content of the assent given by the President. If an occasion comes we will do that and, the courts will definitely look into it, because there is nothing today that is beyond the pale of judicial review, including the power of the President to give assent to an amendment or to a law which, prima-facie, is repugnant to the parliamentary law. There is no doubt about the repugnancy, but what saves those state amendments is only the assent of the President and that can be challenged.

I will make my submissions with regards to the legality of these amendments a little later but I am only on the procedure right now. I see these amendments not only as dilution of the 2013 Act but as a very annihilation of the Act because SIA, consent and public purpose assessment constitute the basic features of the Act. There is only one

sentence in the Statement of Objects in the Bill that, it is to expedite the project execution. As if 2013 Act is a stumbling block.

In a project, which is of utmost importance in the interest of the nation such as a defence project, a project of national security you can provide for a shorter time for SIA. You can, perhaps, do away with some non-essential procedures for SIA. Likewise, if there is a requirement of consent, instead of 80% consent for projects by private companies, you can reduce it to 50% or 51%. You may say 50% is good enough, the requirement of 70% can also be lessened, but you cannot totally do away with it because you are then completely excluding the class of landowners from the process of acquisition. Don't do that. That will become counter-productive. That will only give rise to resistance. And why do you presume that the functionaries executing SIA would be insensitive to issues of public interest and national importance and the welfare of their own self. They can be educated. The rural population is also very alert, they are very intelligent, they are wiser than us, they can be educated. But on some hypothetical assumption that projects would be delayed if these procedures are followed and, therefore, need not be followed, that's completely wrong and it shouldn't have been done. My views on consent are with regards to procedure, because, I see that this entire state legislation as a constitutional fraud. This is done with the tacit support and consent of the Central Government. When the matter is sent to the President for assent and his assent is obtained, I want to know how much disclosure has been made about the repugnancy and its effects before the President for enabling him to take an informed, considered decision about whether to give or withhold the consent. That is a matter, which will be examined by the courts one day, I am very sure.

The Parliament has been completely bypassed, it is a complete overreach by the state governments, this is about the procedure. However, with regard to the legality and propriety of these provisions, I do feel that consent provisions need to be reasonable. In the name of giving participation to the landholders, we cannot give a tool in their hand to hold to complete ransom. I am not in favour of giving absolute power to people in the name of their consent, it can be misused. At the same time, it would

not be in the interest of the people and in the interest of development to do away with consent.

I have a suggestion, which can possibly be taken note of by very distinguished officer, Mr Meena. I recollect that there are provisions in the old Act, like The Telegraph Act and The Electricity Act, consent was required for acquisition of private land for the purposes of erection of the towers, poles, etc. We have several laws in mining sector for taking consent of the landowners, before the grant of the mining lease or prospecting license because ultimately it is their land. But there is nothing like absolute consent. I recollect that when consent was withheld for reasons which were not justifiable or which were absolutely untenable, then there was a provision to approach a judicial authority for determination of objections. A similar machinery can be created to examine the withholding of consent by landowners, by judicial authority or the quasi-judicial authority within a limited period of time and what he decides becomes final. The SIA provision has a very salutary objective, it is a very wholesome provision and its complete annihilation for the sake of PPP and private company's interest is absolutely illegal, as it violates the basic features of the 2013 Act.

I was very delighted to hear from Mr Meena that studies show that the Act has done very well. If that is so, all I would wish that those who are responsible for the implementation of the Act be more sensitive towards the affected people—the landowners, affected families and also towards the needs of the people or entities which require land for purpose of development. There has to be a proper balancing of both the rights undoubtedly, there are some issues which need to be sorted in the area of implementation. My learned friend, Mr Mahesh





Kumar has been quite candid to accept that the spirit of the Act is very good but the problems are related to implementation. He has something to say about bureaucracy but I don't entirely agree with this, we have good officers, not too good officers, bad officers. But, yes, we can create authority which can monitor the implementation. If implemented in the right spirit, it will not stand in the way of development of the country and the progress of the people. I am indeed honoured to be present here. Thank you once again.

H S Meena: Thank you very much Shrivastavji. , Now, you all must be very confused because two panellists spoke in support of the Act, one was slightly neutral and one is entirely against it because of the time constraints. I have forgotten to explain that I had an occasion to present this Act in front of the Asian Development Bank (ADB) at Manila where 63 of 190 countries were present and, similarly, in the World Bank at Washington. It is on record that this document has been classified as the best document in the world, as far as livelihood and compliance to R&R obligations are concerned. We do not comply with one provision namely, if the person is residing illegally on a government land then, as per the provision of this Act, he is not entitled to any type of compensation but, as per World Bank and ADB, he should also be given some sort of support for livelihood. Due to the economic conditions of our country, we are not allowing that, otherwise we are 00% compliant with the World Bank and the ADB norms. We are criticising the document but Vietnam and other countries are copying it. Maheshji and Shrivastavji have

very correctly explained the provisions of the Act and I agree that the issue is of implementation. The problem is that we are not ready to build the capacity of the officers who are really responsible for the implementation of this Act. True, there are certain anomalies in the Act. But if you follow all the provisions and have capacities, especially the capacities of SIA team, SIA experts, SIA persons, and SIA institutions, I think it is very simple, if you conduct SIA successfully and the report is accepted by the government, then the subsequent process becomes very simple. I can give you an example; the present chief minister of Bihar, Nitishji was the Railway Minister in the Gol. He had a dream project, the Navi Nagar Super Thermal Power project, a joint venture between the National Thermal Power Corporation (NTPC) and the Government of Bihar, which was completely stuck. Land was acquired using the provisions of the old Act. The farmers were not ready to accept the compensation, leading to firing and 19 persons were injured, 2 persons died, and 20–25 cases were lodged against the farmers and the officers. In spite of the acquisition of land, the project couldn't start. I joined in 2011 as the Principal Secretary of the Revenue Department, so I was given the mandate to initiate the project. The only reason why it was stuck was that they had not conducted the SIA, nobody had gone to the site. I was the first to visit the 8–9 villages where this project was located in which about 2000 families were to be displaced. They said that even the Patwari had not come to the site. When the Collector and I consulted the villagers, within five days the project was started.



KEYNOTE ADDRESS BY SHRI G B PATTNAIK, FORMER CHIEF JUSTICE OF INDIA

I retired from the Supreme Court, way back in 2002 and ever since then, I had no touch with the Acquisition Act of 1894 nor am I in touch with the new enactment on which the seminar intends to deliberate. Therefore, I am not very sure about my own competence to express my views on the Act which is an expropriatory legislation taking away the Right to Property and how it has tried to address grievances generated by the old Act. The subject of the conference is the five year journey and way forward. One would ordinarily expect to discuss about the commencement of the Act, how it has taken shape during the last 5 years, the loopholes in the Act, who are the participants or stakeholders, how the courts have dealt with different provisions of the Act and the possible remedies, to be suggested by this august gathering.

Now, if you see the R&R Policy 2007, SIA provisions were included in the same form as it is in the new Act. The only thing is that it was a policy, so it was not binding on the Central and state governments.

Joyita Ghose: We have been able to hear several different viewpoints, each of which was compelling in its own way. I would like to thank all the speakers for taking time out of their schedule to join us today. Unfortunately we don't have time for questions right now, we are running a little behind schedule, but in the next sessions, we would like to hear from the audience as well. I would like to request Dr Das to give a token of our appreciation to all the speakers for taking time out to join us today.

Day 1, Session 2 'Land Procurement Models: What Have We Learnt'

Joyita Ghose: Welcome back to the second session. I would like to welcome Shri G B Pattnaik, who is the former Chief Justice of the Supreme Court of India. Sir was the 32nd Chief Justice of India. I would now request sir to deliver the keynote address and I also invite all the panellists to join us on the dais.

But I would like to briefly discuss the history of the land acquisition legislation in this country, the enactment of 1894, the enactment of 2013 and how courts have dealt with some provisions of the new enactment, what are the pending legislative changes and the possible remedies that can be made available. Now, land or property is a subject which is very dear to every individual, not only in this country but in the entire world. Therefore, our common habit is try to grab even one inch of land from somebody else, and not to part with the land we have, even though the land is not giving any income. There is an emotional attachment with property in every individual that can't be changed by legislation. But, land is needed by the authorities for executing several beneficial projects, whether hospital or road and so on and so forth. If you look back at the history of this country, in earlier days, probably there was enough land, people were less and, therefore, it was not difficult to acquire a piece of land. But there was no legislation until 1870, and, in those days, even if land was being acquired, some amount of money was paid as compensation, to be decided by an arbitrator and there was no appeal against

that. There was no guidance even for the arbitrator to decide the criteria for fixing the compensation. The first enactment during the British regime was in 1870. But that Act also was not very efficacious, it didn't have guidelines as to how the process of acquisitions would continue, what would be the norm for determining the amount of compensation to be paid to the landholder. Therefore, after a lot of deliberation among different provincial governments, the then Central Government enacted the LA Act of 1894. The Act did provide an elaborate procedure and, as far as acquisition is concerned, it started with a notification under Section 4(1) and culminated with the award of the Collector under Section 11, to be challenged by way of a reference under Section 18 and a further appeal to the court. There was an emergency provision by which the appropriate government could dispense with the provisions of Section 5(a) under which the landholder was entitled to raise an objection to the acquisition. So, the landholder had the right to file an objection under Section 5(a), to give evidence before the Collector with regard to compensation, to challenge the award by making a reference to the court, which would be heard by a District Judge, and against that, an appeal could be preferred. Now, I was a government advocate for 12 years and, in that capacity, I have tried to defend the government in LA matter but utterly failed. Failed for two reasons, there was a racket in the acquisition, there would be some lawyers who usually dealt with LA and they would get advance information from the appropriate section of the Collectorate that for this project, this is the area identified and land is going to be acquired. Before the public announcement of a project, they used to get small sale deeds of one decimal or half a decimal executed, during the relevant period, for a very high price. After the acquisition process started, they used that as evidence and, on that basis, courts granted huge compensation as the courts were very liberal. A land which would be, say, 5 km from the headquarters of the state where the project was going to be set up, was being compared with land in the interior part of the state and compensation was paid accordingly. So, therefore when I read the very title of the new Act, Right to Fair Compensation, in my humble estimation, the compensation which was being paid cannot be said to



be unfair in any manner, rather, to me, it appeared that the state exchequer was being depleted by making huge compensation to the landholders. There were two areas, one was LA and the other was arbitration where, I, as a government counsel, had defended the government and I used to say that these are two rackets where public money is being spent.

Be that as it may, the said Act remained in force, from 1894 till 2013, when the present enactment came into the Statute Book. Now, in 2010, the LA Amendment Bill and the R&R Bill was introduced in Lok Sabha and passed on 25th of February 2009. But, the Bill lapsed with the dissolution of the 14th Lok Sabha. Thereafter, steps were taken to have a unified legislation, dealing with acquisition of land, providing for just and fair compensation and making adequate provisions for R&R for the affected persons and their families. The present legislation emphasized the imperative need to recognize R&R issues as intrinsic to the development process, formulated with participation of affected persons and families, and benefits, beyond monetary compensation, are proposed to be provided to the families affected by involuntary displacement. In fact, a broader effort has been made to include, in the R&R framework, not only those who directly lose, but all those who are affected by such acquisition. Displacement often causes problems and, as past experience show, several projects for the benefit of the state could not go through merely because the acquisition process could not be completed. The present law applies when the government acquires land for its own use, hold and control or with the ultimate

purpose to transfer it for the use of private companies for stated public purpose or for the immediate and declared use by private company for public purpose. R&R applies when the private companies buy more than 100 acres of land in the rural areas or more than 40 acres in urban areas for a project. The main reason that appears to have prompted the legislature to enact a new Act is the fact that the old Act didn't address the issue of R&R of the affected persons and their families. And, the definition of the expression 'public purpose' under the Act was very wide and the legislature felt that the private lands are being acquired under the old Act, because of wide definition of public purpose as interpreted by the Supreme Court. The Parliament thought to enact the law dealing with all the aforesaid situations and it was felt that the law should be enacted bearing in mind the national R&R policy and making the process of acquisition more transparent and participatory.

I don't think that the old Acquisition Act lacked transparency, certainly, it was not a participatory one. If the provisions of the new Act are analysed, it would appear that the said Act intends to ensure food security and permits acquisition of multi-cropped irrigated land, as a measure of last resort. An equivalent area of wasteland will have to be developed, if multi-cropped land is acquired. The Act also purports to ensure a compensation package for the landowners, a scientific method for calculation of the market value of the land, which would be more beneficial to the landowner. The provision for R&R package is undoubtedly a new concept, and has been adapted mostly on humanitarian consideration so that the landowners are not faced with gross hardships. All care has been taken to make special provisions for SCs and STs, with regard to their economic condition and having regard to their special status under the Constitution. Whether these beneficial provisions under the new Act are being implemented in the true spirit and right earnest? And how are the provisions of the new Act able to achieve the objectives and reasons of the Act? And, how are the provisions of the Act being interpreted by courts of law? To ensure sustainable growth in the economy of the country, what is necessary is a balanced approach and no country can claim to be developed merely by industrial growth, particularly, a



country like India which is essentially an agricultural one. For development in a country, the growth of agriculture and food production is equally important with the growth of industry and provision of necessary infrastructure. The process of acquisition purports to provide the necessary infrastructure growth as well as to provide the industrial growth. So far as the constitutional scheme is concerned, all of you know that when the Constitution came into force in 1950, Article 19 (1)(f), and Article 31 conferred the right to acquire, hold and dispose off property to an individual. Article 19(1)(f) was repealed by the 44th Amendment in 1978 when Janata Government came into power. The net effect of that amendment to the Constitution was that the Right to Property ceased to be a Fundamental Right and, therefore, no one could move the Supreme Court, under Article 32, on the ground of violation of his Right to Property. Instead, clause 1 of Article 31, was incorporated in Article 300 A, which means that if an individual property is taken away by executive action, unsupported by or in excess of the authority conferred by valid law, then he may seek appropriate remedy from the High Court under Article 226.

If the State seeks to acquire the property of an individual, it can do so by making a law and after payment of some amount, by way of compensation for such expropriation. A look at the Statement of Objects of the 45th Amendment Bill to the Constitution, would reveal that the Right to Property, which gave rise to more than one Amendment to the Constitution, ceases to be a Fundamental Right and would, therefore, only be a legal

right. For this purpose, amendments were made, both through Articles 19 and 31, but the right of persons holding land to receive compensation at the market value is not affected in anyway. While property ceased to be a Fundamental Right, it got recognition as a legal right. And, therefore, no person, shall be deprived of property, save in accordance with law as contained in Article 300A. The 45th Amendment to the Constitution, brought about a revolutionary change in the Right to Property and only a vestige of Right to Property is now contained in Article 300A, which is outside of Part 3 of the Constitution. This august body, consisting of several stakeholders, will express their respective viewpoints pertaining to the legislation in question and, if they find loopholes, they should point out the same to the Parliament, even the state legislature, to look at the same and come forward with necessary amendments.

I find that the concept of having SIA study as incorporated in Section 4 is, indeed, a laudable one, which enables the elected bodies at the village or ward level to express their views on the proposed acquisition. The Act also provides for a public hearing in the affected area after giving adequate publicity which makes the process of acquisition a participatory one. The appropriate government then takes the final decision after examining the report of not only the Collector but also the report of the expert group on the SIA study and then takes a decision, to ensure minimum displacement of people and minimum disturbance of infrastructure and ecology. The only exemption from social impact assessment is when the land is proposed to be acquired under the urgency provision, under Section 40. Though the Act doesn't indicate in which case the government can take resort to the urgency clause but it is apparent from sub-Section 2 as well as other provisions of the Act that the



urgency in question must be such that it cannot brook the delay of going through normal processes. These contingencies are defence of the country, national security or natural calamities. Section 40(2) indicates that if the urgency provision is resorted to, then the approval of the Parliament is necessary.

The second redeeming feature of the Act is the requirement of obtaining consent when the land is being acquired for PPP project where, of course, the ownership continues to rest with the Government and for private companies for public purpose, as defined in Sub-Section 1 of Section 2. This provision has made it feasible to acquire land easier than what it was under the old Act of 1894 where several large-scale projects didn't come through because of the objection of the local public on certain trivial grounds. You must have read in the recent past how the acquisition of land for the new airport in Uttar Pradesh has been possible with the consent of the landowners, even the state government has already allocated funds for the same. From my own experience I can say that big projects have been stalled on this score. In the state of Odisha, where I come from, way back in 1960s, a defence project of Rs 7000 crores in the district of Balasore was stalled because certain persons were cultivating betel leaf there. A project at Gopalpur, which was supposed to have been taken up by Tatas, was stalled because land could not be acquired there. The great project of POSCO for steel plant could not go through after years of public objections. Not only that, I have recently come across a matter where under the PPP partnership programme, a stretch of national highway was being constructed in Bihar, from Ara to Gaya, one of the conditions was that Bihar Government must give the Right of Way to the contractor over 100% of the land. They failed to do so and the agreement provided that the contract would be rescinded on that score. The contractor did rescind that contract and has claimed more than Rs 5000 crores, which is pending in an arbitration dispute. You can imagine the national loss which the country was facing on that score.

Coming to the question of compensation for the land acquired, the new enactment awards money for the loss of land, but also, any other loss which may arise due to acquisition and process incidental there too. The Act



provides for a solatium of 100% of the compensation, and interest on that, from the date of notification till the date of actual payment, that apart, the Statute itself has fixed four times of the market value in rural areas and two times of the market value in the urban areas, which would ensure substantial life sustenance resources to the affected families who would be displaced by the acquisitions. As I have already stated, the concept of R&R is entirely a new approach, the report in such cases would include the impact of acquisition on the life and livelihood of the affected persons, the community and the social life, infrastructure and public utilities. The Act provides that possession can be taken only after the payment of compensation and notification of R&R award. These, to my mind, are some of the key provisions of the new enactment and undoubtedly, the new enactment is a much debated, well thought, well considered, beneficial legislation not only for the landholders but also for the other stakeholders, namely, the industry and the companies, it has tried to strike a balance.

When we look at the journey from 2014 to 2018, the last five years, we see that the Act came into force on 1.1.2014. The new Government that came in May 2014 immediately felt the need for amending some key provisions because, it thought, they stood in the way of speedy acquisition of land for industry and infrastructure. An ordinance was promulgated to do away with the requirement of consent and social impact assessment for industrial corridor, defence projects, rural infrastructure and also diluted the provision regarding the return of acquired land to the landholder, if it remained unutilized beyond the stipulated period. The ordinance was withdrawn in 2014, but an amendment Bill was introduced which was passed in the Lok Sabha, but could

not be passed in Rajya Sabha and was referred to a Joint Parliamentary Committee where it is still pending. As far as the State Legislatures are concerned, some states have amended some of the provisions of the Act. Broadly, the state amendments relate to exemption from social impact assessment study for certain category of projects, exemption from consent requirement for projects in PPP mode and payment of lump sum amount, instead of R&R award, for certain category of projects, direct purchase from landowner and speedy payment of compensation amount, by exempting the requirement of enquiry for certain projects. And the state governments are bringing these amendments in the exercise of their rule making power. However, I have my doubts. Though the subject of acquisition is in the Concurrent List and state legislatures are competent to enact a law so far as the rule-making power is concerned, this is a delegated power, which they derive under Section 109 of the Act which clearly says that states can make Rules for the enforcement of the provisions of the Act. Therefore, if any state, in exercise of the Rule making power, makes a law or has made a law, which is repugnant to, or contrary to the provisions of the Act, that rule, in my view, will certainly not stand the scrutiny of the courts in future. Of course, I am not very sure because I have not examined the relevant provisions, but, I saw some provisions in the Rules of some states, which are contrary to the provisions of the Act and, certainly, no state in their Rule-making power can make such Rules which go beyond the provisions of the Act. Let me now tell you how the Supreme Court - the highest court of the country, has interpreted some provisions of the Act and the dilemma in which it has put others. There is a provision in the new Act which says that, even though the acquisition process

started under the old Act, in some contingency, the acquisition must be held to have lapsed due to certain events. These are—the award for compensation has not been made till the time of enactment of the new Act or, if payment of compensation has not been made or the possession of land has not been taken, though the award was made in the preceding 5 years from the date of the commencement of the new Act. Shortly after the enactment of the Act, the Supreme Court had to adjudicate on the interpretation of Section 24(2) with respect to the payment of compensation in the case of Pune Municipal Corporation. The court decided that the expression, 'compensation has been paid' would mean that the compensation was first offered to the landholder and, on his refusal, it was deposited in court, court means the reference court, which an aggrieved person had approached, against an award under the old Act. This was a judgment of a three-judge Bench. Unfortunately, in the case of Indore Development Authority, another three-judge Bench took a contrary decision and held that 'compensation has been paid' means that it was offered to the landowner but rejected by him, it is not necessary that it must have been deposited in the Court. They held the earlier judgment to be per-incuriam and, then, took a contrary view. With the utmost humility I command, there is no precedence and it is highly unethical on the part of another three-judge Bench to dub a previous judgment as per-incuriam, it means the judges who decided the case didn't know the law, it almost amounts to that. There is a Rule of Precedence which says, if you don't agree with the view of an earlier Bench of the same strength then you should refer the matter to a larger Bench or request the matter for being considered by a larger bench. It created havoc because, in several states, cases were disposed off by following the Indore Development Authority Case. Subsequently, the Chief Justice passed an order that this issue of land acquisition will be considered by a Constitution Bench. But, I think, the Bench has not been constituted so far, and the matter is still pending. Therefore, one decision here and there can cause havoc so far as the vital right of the landholder or any other stakeholder to the property is concerned. I must express that I am less competent than all of you, who, I believe, are different stakeholders and must have gone through the Act. In your deliberations you would be able to put your

ideas, criticisms, and comments not only on the Act itself but you can suggest what possible amendments can take place, to ameliorate the grievances of all concerned so that the legislation pertaining to land acquisition will go through smoothly without any hassles or hurdles.

I thank the organizers for giving an opportunity to several stakeholders to offer their respective views and the compilation of these views would obviously give a handle to the legislature to consider and decide what further steps can be taken in this regard. Thank you very much for giving me this opportunity.

Joyita Ghose: Thank you very much, sir, for giving us such a comprehensive overview of the broader set of issues, that surround LA right from 1894 to 2013, then the ordinances that came in, and the more recent judicial interpretation of these laws. I would like to request Dr Das to please give a small token of our appreciation, to sir for his keynote address.

The first discussant for today is Mr Subhash Chandra, Additional Principal Chief Conservator of Forests in the Ministry of Environment, Forest and Climate Change. I request sir to please share his thoughts with us.



MR SUBHASH CHANDRA,
*Additional Principal Chief Conservator of
Forests, MoEFCC*

The Honourable Justice has made a very good presentation on the Act and its five year journey. We were enlightened, what are the issues and how complicated and complex the procedure of LA is and, in fact, still we all are learning from this. My presentation or talk will be



limited to the issues related to acquisition or diversion of forestland. As you all will be aware that in our country almost 99% of forest land is under government ownership. And being government land it cannot be acquired, it is basically diverted for non-forestry purpose. And you may also be aware that India aspires for 1/3rd of the land area to be under forest cover, which is 33% as per the National Forest Policy. We have around 24% of the area under forest and tree cover; 21% under forest cover and approximately 3% under tree cover. When the tree cover is less than 1 hectare, it is not, as per the definition, forest cover. There is 'recorded forest' as per the notified forest area, and 'forest cover' as per the assessment of Forest Survey of India. The bi-annual *State of Forest Report* gives the state of forests in three major categories—dense forest, medium forest cover and open forest cover, depending on the density of the vegetation.

In fact, forests, we all know, are the harbingers of the biodiversity and they play a very important role in the sustenance of the large rural population. Most of these Scheduled Tribes and rural population are dependent on forests for various products and services. And, if the forests disappear they will be very adversely affected. Many livelihood opportunities of the Scheduled Tribes

are interlinked with the forest. In fact, the Forest Rights Act, 2006, was promulgated to recognize the rights of the local inhabitants or tribals in various parts of the country. The process is still ongoing, I don't think that forest rights have been settled so far, but they are very important for the rural and Scheduled Tribes people. In our country, the forest areas are also overlaid on the mineral rich area, iron ore, bauxite, coal, etc., are falling in the heavily forested and good forest cover area. So, the matter becomes very complex, suppose the mineral is there, then you have no option but to go for mining in national interest, depending on the value and requirement of the mineral. At the same time, you require forests. As we know that all our major rivers are originating, traversing through the forest which helps them in maintaining the water balance and water flow. In 1980, the Forest Conservation Act was promulgated, it is a very short Act, you can say only three Sections are there, where the Central Government has the power to grant permission for diversion of forest or it gives the power to grant approval to state government, where the forest area is required to be diverted for non-forestry purpose. There are a large number of Rules, I think, they may go up to 40-50 pages, to address various situations for governing the process of forest clearances. In fact, the process for



forest clearances starts at the state government level. The project proponent who is requiring forestland for any development project or non-forestry purpose has to apply to the state government, particularly, the district level officer, either Deputy Conservator of Forest or District Forest Officer. After the preliminary investigations that include an inspection of the condition of the forest area, if the state government is of the view that diversion of forest is acceptable, then they send the proposal to the Central Government for approval. The Central Government examines the proposal, and its regional office, it has ten regional offices in the country, processes the proposal, inspects the area and gives its recommendations—whether the proposal can be accorded forest clearance or not. The powers have been delegated. Suppose 40 hectares of area is to be diverted, it can be approved by the regional officers and if the area is more than that, then it comes to the Central Government. The process takes a lot of time because there are public consultations. After the Forest Rights Act, the Ministry also stresses that the forest rights in the forest area proposed to be diverted have to be settled before the forest land is diverted. Apart from that, as per the Forest Conservation Act, there is a requirement of compensatory afforestation in an equivalent area of non-forest land, or twice the diverted area in a degraded forest land. There is a compensatory afforestation fund of state governments in which deposit has to be made by the project proponents.

Forests have many other environmental functions and, at the direction of the Supreme Court, Net Present Value was added, depending on the quality of forest cover. This

also has to be deposited by the project proponent. After the state government is satisfied that all the conditions specified in the preliminary or in-principle approval test by the MoEFCC have been met, the state government sends the proposal to the Central Government again, for giving final clearance to the project. But, after the Forest Conservation Act, the diversion of forest land has drastically reduced by almost 40 times. After the enactment of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, our concern is that the tribals and local population living in the forest area should get proper compensation. Because, their livelihood is intricately inter-woven with the forest, so they neither have adequate skills or immediate resources to fall back on some other livelihood means. Therefore, the issue of compensation to the tribals, particularly rural population, that are dependent on forest has to be handled very sensitively and compassionately. Otherwise, these are the people who suffer the most from diversion of forest, and particularly, the coming of new set of economic activity, because they cannot cope with the new economic environment. That is why industries, which are going for diversion of forest cover, should carry out adequate social impact assessment and try to have consensus and the package, which can address the interests of the forest-dependent people. The settlement of forest rights in such areas needs high priority.

Apart from these, if the area required is located in a wildlife sanctuary or near it, the approval of National Board of Wildlife is required, which is very cumbersome and difficult to obtain. At the same time, the country needs to go for rapid economic development if we have to address the issues of poverty and employment, and for integrating with the global economy and developed world. So, this also poses a very difficult situation for the government and industry. The industry faces the challenges of competitiveness with the global industry due to high land acquisition costs, compared with other developing countries of South-East Asia and even our neighbours, such as Bangladesh, Myanmar, Thailand, Vietnam, etc. It is very difficult to compete with them in the products so there is no commensurate increase in our exports. It is a very complex process, we have to work

together with the society at various levels and try to find a solution.

Forest clearances for infrastructure projects take a lot of time. We have to strike a balance because delay of such projects has enormous cost to the economy, the government and the people as well. So, it is imperative to try and minimize conflicts in the areas where we are trying to acquire land or diverting forest area.

Joyita Ghose: Thank you, sir, for sharing your thoughts on the process of using forest lands for non-forest purposes and the manner in which other laws, such as the Forest Conservation Act of 1980 or the Forest Rights of 2006, or the more recent, Compensatory Afforestation Act, play a role in the process of procuring land. We will now request the second speaker Mr Vinay Kumar Singh, who is the Executive Director from National Highways and Infrastructure Development Corporation Ltd, to please share his thoughts.



VINAY KUMAR SINGH, *Executive Director, NHIDCL*

My organization, National Highways and Infrastructure Development Corporation (NHIDCL) was set up in 2014, it is a very young organization. It has been given the task of constructing national highways in the North Eastern and Himalayan states. The areas in which we work are most treacherous and inhospitable terrains where development was very meagre before we arrived. Though development was underway but the pace was very slow, and the people welcomed us there, because they want development. They are ready to offer anything, if you ask for their land, their houses, they are ready to

break their houses, they are ready to give their land willingly. So, this compensation is a very relative term, those who are in need they desire development while those who are already developed, need compensation. But we have to follow the Rule, fair compensation is required, and the people who are disturbed, have to be rehabilitated and resettled. The RFCTLARR Act, 2013, has been a boon for national highway (NH) projects. Earlier, when we approached people for land, it was very difficult to get it because the compensation paid to them was very small. With the introduction of this Act, now the landowners are willingly coming forward, and they say, "please, take my land". They are getting two benefits, first, they are getting really very good compensation and, secondly, their land value increases, because once the national highway is there, they have got lot many things to do. In short, we can say that development starts with access of NH in that area. When a national highway is conceptualized, the first process is to prepare a Detailed Project Report in which all the provisions made in the RFCTLARR Act, 2013 are generally incorporated like SIA. Being a national highway, the first priority is how much traffic is plying on that road, we go for the traffic census and using a scientific method, we project the future intensity of the traffic. Accordingly, we prepare our plan, whether, we require single lane road or double lane road, or four lane road, or six lane road. Accordingly, our land requirement is assessed. Once the District Plan is prepared, it is given to the revenue or local authorities indicating the requirement for land for the project. Then, as per the procedure, a competent authority for LA, called CALA is appointed under Section 3(a). He goes to the affected villages and affected areas and identifies the portion of land that will come within the project area. The public is informed about the areas through which the NH is passing, and if anybody has any objections, they may come forward for discussion. A public consultation is organized as a part of The RFCTLARR Act. During the consultation, the objections are noted and the revenue authorities try to mitigate their problems. Thereafter, notification is issued under Section 3A of The NH Act, 1965, declaring the Government's intention to acquire the land, giving the exact measurement and the particular khasra number or khata number of land or portion of land that is covered by the project area.

Earlier, people would object to a road passing through their land, but nowadays, even though we require only one kanal (unit of land measurement) of land, they are ready to part with the whole piece of the land because they are getting good compensation. So, after the assessment of land to be acquired for road development, a notification is published under Section 3D for the acquisition of land. Within one year of its publication, compensation has to be paid to the landowners. Accordingly, we deposit the money with the CALA and they disburse it. If anybody has any objection, an arbitrator is appointed and that arbitrator settles the issue. Generally, the payments are made after the judgement. If, even after the arbitration, the dispute is not resolved, the case goes to the court and as per the court's decision, compensation is paid.

When we build roads that are not national highways, we follow the local Rules; each and every state has got their own Rules for the state highways and other roads. Mostly, the state Rules are in consonance with The RFCTLARR Act. Deliberations are held with state governments and, according to their recommendations, we pay compensation. In Nagaland or in Arunachal Pradesh, nobody owns land, it is all community land, so to whom the compensation is to be paid? It is a very big question. But, people are using that land for their livelihood, they are cultivating the land, they have their shops and there are settlements. So, there is a problem but we are proceeding in consultation with the local Government and the Central Government. In Nagaland, the Government is bearing the cost of construction of national highways, and likewise, in Arunachal Pradesh. Now they have become wise and they have started allocating the land to communities and the communities are sub-dividing the lands to the owners who are claiming that they should get compensation, as per The National Highways Act. In case of projects funded by ADB or the World Bank we carry out Rehabilitation and Resettlement also, though, The NH Act does not provide for it.

This was, in short, what we follow for the development of national highways. I can say that we are facing very little problem, unless and until, as Shri Shrivastava, Senior Advocate, Supreme Court said, land mafia purchase the land and then go for litigation. Litigation takes place because of their greed, otherwise, in NH sector, land

acquisition has become a bit easier and life is simpler now. This is what I wanted to share.

Joyita Ghose: Thank you very much, sir, for sharing your experience from NHIDCL, of acquiring land for highways which are linear projects and the challenges of working in remote and hilly regions and also the need to strike a balance between compensation and development.

I would now request the third speaker for today, Dr D V Giri, who is the Secretary-General of the Indian Wind Turbine Manufacturers' Association to please share his thoughts.



DR D V GIRI,
*Secretary General, Indian Wind Turbines
Manufactures' Association*

I will be talking about the land and renewable energy projects. However, it will be confined to wind because I have no knowledge of solar. Though we work with solar, on wind-solar projects but I will restrict myself to wind. Having heard the Chairman and the two eminent speakers, I think I learnt more than what I am going to share with you, but I will leave a few thoughts. Dr Das has requested me to talk about the models of land procurement for renewable energy projects but I will give you a quick background.

Land for wind energy is perhaps the most critical. It forms, maybe, about 3%–5% of the entire project cost but land will decide how much energy can be harnessed. The three factors that go into any development of the wind project are, one, the land which will determine the plant load factor; second, of course, the capacity of the project and,

third, the interest to draw up your viability. I'll just digress for a minute. The Government of India is now looking at renewable energy as the main source of energy and to move away from fossil fuels. It means that by 2030 and beyond, we would have more renewable energy projects and this has been demonstrated elsewhere in the world. If land is a critical mass for wind energy projects, I wonder whether land should be made a national resource. At present it is a Concurrent Subject and it is with the states.

Sir was saying that when it comes to an important project, whether it is fair compensation or not. Fair compensation will be paid but, I think and, this is just a utopian thought, and we need to look at land as a very, very important national resource. The beautiful thing about wind energy projects is that land is procured to the minimum level of requirement which means that you can have a turbine which is either on private land purchased outright as in Tamil Nadu or on revenue land leased out by state governments or by the Forest Department. Let us take the case of private lands. When you purchase private lands on foot print basis, if you get about 10 acre parcel of land, we would require about an acre and a half or two acres to put up a 1 MW project or 2 MW project, the balance land of 7 acres can be used for agriculture, which means that agriculture can co-exist with wind. If you take a typical case of Tamil Nadu where it is all private land, believe me, ladies and gentlemen, the price which the industry pays to the farmer is more than the commercial value of land which means that money is going to be put in their bank. These lands are primarily wastelands or dry lands, where the returns are very poor, we don't touch lands which are fed by canals or by dams. So, the money he would put in fixed deposit would be much higher from granting the Right of Way compared to what he would get from his agriculture produce. Dr Das has asked me to talk about the leasing models which we have on the leasing of land. Let's take the forest lands. I am happy Subhash Chandra Sahab is here with us today. I am sorry to say, sir, it is very, very cumbersome, you could probably take about 24-30 months to get land. I hope Sir will correct me but it is very very difficult to procure forest land. Having got the land, let us say, land cost in any wind project, if it is x for private land, or point five x for lease lands, for forest

land it is more than $2.25x$. This is primarily because you have to pay lease rental, you have to worry about compensatory land, you have to pay compensatory charges, compensation for medicinal plants and, on top of that, we have to pay for NPV charges. This fact has to be highlighted. I am sure Subhash Chandra sir, in our later meetings, will help us and advise us on how to go about it.

In my view, wind energy projects in the forest areas are being likened with mining projects. In mining areas where you take the forestland, you are mining something out, be it bauxite, or any other mineral. Here we dig the forestland, make our foundations for our turbine and we fill it back, we do not take anything from the forest. The NPV charges are as much as Rs 10–15 lakhs. We are just adding to the cost of the projects when the Government wants to push tariffs down. They say that we need to have wind projects and wind energy and renewable energy projects as an affordable, round-the-clock power. If you are going to push up the costs and if you are going to confuse wind projects with mining projects, this has to be taken care of. As Subhash Chandraji has said forest lands covering sanctuaries or, after Madhav Gadgil's reports on Western Ghats, we don't go anywhere near those areas. Now, when you come to revenue wastelands, we have no problem either with the forest or with the state governments in fixing the rental charges. It is a beautiful, transparent process, and we are very happy with that, and I think we can get land from the Collectorate within six months, I think that's fantastic. The problem is that when we are given the revenue land, we find a lot of encroachment has



already taken place. Due to encroachment we again run into the Right of Way problem which delays the project, escalates the cost, bankers get worried, liquidated damages come on the original equipment manufacturers (OEMs) and suppliers like us who supply the wind energy equipments, so no stakeholder is happy. Now even for laying the transmission lines, I am told there is something called The Telegraphic Act which specifies where you can put your lines. Believe me, it is without exaggeration, some of the projects that I know of in Tamil Nadu, when I was the Chief Executive of a Danish Company, it's a vulgar unbelievable one crore of rupees per pole. It would be very, very unfair, to ask for crores of rupees for compensation. We are talking about fair compensation. I think something definitely needs to be done, because the transmission lines that are once laid and electrified, become a national property, I don't own the poles, I don't own the lines. So, I guess, something needs to be done on that. Now, let us come to private lands. In private land, it's just purchase of land, whether it is in Maharashtra or Tamil Nadu, whether you call it Patta in Tamil Nadu or Satbara in Maharashtra. The problem is, whether dry lands or wastelands are considered as agriculture lands, when you convert an agriculture land to non-agriculture use you have to get a land use conversion certificate. And, believe me, getting it is difficult. Land is given to you but the land use change from agriculture to non-agriculture is a herculean task. Fortunately, some of the states have decided and have passed legislation, that if you apply for conversion and if you don't hear from them within two months, it is deemed conversion. But in some cases they insist that you need to have a piece of paper. Now, just imagine what happens, like the Right of Way issue, when you don't get the approval for conversion, you cannot mortgage that land, the investor cannot mortgage that land to the bank. Your financial closure doesn't happen. When your financial closure doesn't happen, the project again gets delayed and then, of course, you have all the problems, of the investor, the banks, everybody is crying. I think we need to look at conversion of land in a very big way.

So, to sum it up ladies and gentlemen, I say that as far as revenue land is concerned, there needs to be an arrangement, forget the compensation, forget anything

else, but we need to sort out the ROW issue, they are really hindering projects. As far as forestlands are concerned, it's expensive, time consuming and we need to relook at the NPV charges. As far as private lands are concerned, it is the conversion of land from agriculture to non-agriculture. Talking about power and renewable energy they say that the next world war is going to be on water. Of all the fossil fuels or any renewable energy project, the only energy source, which doesn't use water, is wind energy, please think about it. We buy land for just the minimal use, where agriculture can co-exist, and we don't require a drop of water, other than the water that is used for foundation. Rainwater cleans the blades. So, ladies and gentlemen, I hope the learned audience and the officers in power, who decide the future of renewable energy projects, which are the ambitious projects of the Government of India for now and for the future, to look at energy, climate change and global warming will pay heed. I thank you for your patience.

Joyita Ghose: Thank you very much sir, for sharing your insights on the procurement of land for renewable energy projects, and specifically, for wind energy projects as well as the challenges of using different models of land procurement—forest, revenue or private land, as well as sharing some solutions to address these problems. I would now request Dr Meena Vidhani, who is Deputy Director, Planning, Delhi Development Authority, to please share her thoughts with us.





DR MEENA VIDHANI,
Deputy Director, Delhi Development Authority

I find this session very interesting since various thoughts with respect to the LARR Act have been expressed. The perspective that I would be talking about is from the urban development context, insofar as we had renewable energy and forest issues. I represent the Delhi Development Authority (DDA). In a city like Delhi where land is such a scarce resource that needs to be optimally utilized, the challenges for city development are further aggravated. In that context, I would just like to give a brief background of Delhi. Delhi is a city in which development has been taking place through the 1960s. And essentially, it was governed by the Land Acquisition, Development and Disposal Policy of 1961. This was the basis of development and the Master Plans that are prepared by the DDA. But over the five decades of planning and development in the city, we have experienced a number of difficulties. For the planned targets of city development, acquisition could not take place at the pace at which it was required to move. So, this led to a lot of issues. One issue was that acquisition didn't take place and even if acquisition was done, the development couldn't keep pace with the acquisition. So, we had a lot of land that was acquired but couldn't

actually be used for development. People encroached on that land and we had unauthorized colonies and slums, which came through the 1970s. Almost 50% of Delhi's population resides in these kinds of informal settlements, which clearly indicated that the acquisition model and the development model which was adopted by DDA has not actually kept pace with the urbanization needs of the city. The urban development of Delhi is governed by the Master Plan. The 2021 Master Plan came in 2007 with the idea that we should have alternate options for development, not just in terms of assembly, but also in development of infrastructure by the involvement of the private sector. By 2021, the projected population of Delhi will be 23 million, at present the population is 19 million. So we have a lot of challenges for development. With this in mind, we came up with the Land Pooling Policy in 2013, which kind of provides an alternative to the cumbersome or resource-intensive provisions which are there in our LARR Act. I do not know how many out here know about this land policy which has been notified by Delhi Government on 10 November, 2018. The Regulations that will operationalize the land pooling policy, has been notified yesterday. So, I don't know how many of you have a fair idea about what land pooling is. Essentially, all fragmented land parcels are brought together, they are planned in such a way that there is a win-win situation not just for the landowners but also for the agency which is taking up the development. Broadly, with this concept in Delhi, each landowner is going to contribute a uniform 40% land which the agency requires for the planned development of the city in the form of roads, green spaces, infrastructure, utilities, and so on and so forth. For the planned development of the city, the requirement is 40%, rest of the land is available to the landowner to utilize as per the norms and guidelines which are laid down in the Pooling Policy. This policy doesn't provide any bar, an owner of any size of land can come forward and participate. So, what are the immediate benefits for an agency, a development authority or a planning authority. It offers an easy way out from the time consuming and resource-intensive LARR Act provisions. Also, with the direct private sector, we are looking at speedier development of infrastructure, having the best of technology and the smart city technology options. Also, the trends of mismatch between housing supply

and demand will be addressed. With the coming of this policy, significant contribution will be made to meet the housing requirements.

There are key takeaways from this policy. From the perspective of a landowner, the first advantage is that he is not being paid a one-time compensation, he is being made a partner in the development process, meaning thereby, that he gets some land in return, with appreciated land value which he was not getting, if he received compensation under the LARR Act. The benefits that would occur out of this kind of city level development will be directly coming to the landowner. So, he is a part of the entire process till the end, there is no regret that he has got benefit up to a point only, and thereafter, he was never a part of the process.

And I will provide some details. The Pooling Policy covers five zones, called the planning zones, zone J, K1, L, N and P2. The Policy is yet to be operationalized and a lot of pre-requisites have to be put in place before we go forward. But we have identified 95 villages in which this Policy is going to be applicable, there are certain exclusions where it would not be applicable. The details are available on the DDA website and these could be referred.

Coming to the broad concept, the aim of this policy is that we need planned and integrated development, taking the landowners on board. With these kinds of parameters, a sector-based approach has been adopted. With this sector-based approach, any landowner of any size can come forward, what DDA has done in this Policy is to create a single window system, wherein any landowner of any size can come forward and express his willingness. To ensure that we have a minimum contiguity of land for planned development, a 70% benchmark has been fixed. So, once the landowners come together and we have 70% of contiguous land in the identified sectors, we can move forward. The details of the identified sector will be available in the public domain, the landowners would know what are the areas in which they can come together and who are the other landowners with whom they can interact.

Once DDA knows that the 70% benchmark has been reached, through a public notice, it will inform all the constituent landowners to come together. All the

constituent landowners will jointly form a consortium and apply to DDA. The Consortium would be a duly registered Association with all the rights and duties. The role of the consortium is very critical for the success of this policy. This Consortium is essentially, what we would call a group housing society, a resident welfare association (RWA). The Consortium will be involved in all the issues, right from the beginning—approvals that are to be taken from DDA, payments of EDC charges that are to be done, the land that is to be returned to each landowner, resolve disputes and prepare the implementation plan. Thereafter, it applies to DDA.

DDA will sit with the consortium and come out with the sector plan, clearly showing the kind of utilities and green spaces that will come up in the 40% land that we are taking. These will be marked on the sector plan and the plan will be approved. Detailed procedures have been worked out, listing the steps that will be taken once the plan is approved. At a certain stage, all the landowners can go their separate way and develop their plot as per the norms, which are being specified in the policy and the Regulations.

This is the broad objective of this Policy and, as I said, it not just ensures integrated development but also that the housing requirements for Delhi are fulfilled. It is estimated that if the participation in the land Pooling Policy is good enough, housing units to the tune of 17 lakhs would be available in the National Capital Territory (NCT) of Delhi. Taking cognizance of the fact that, in Delhi, around 50% of the population lives in informal settlement, we have provision in which we have given



the landowners an additional Floor Area Ratio (FAR) for housing for the Economically Weaker Section (EWS). The EWS housing will essentially constitute 5 lakh of the 17 lakh housing units; this is a significant number which we anticipate at the operationalization of the Policy. There are a lot of details in terms of the development control norms and the approval processes but the Policy is going to be operated through a single window system. To ensure transparency, speed in execution, all licenses and approvals, everything would be through a single window system.

One more thing which I would like to highlight is the acquisition clause in the Pooling Policy. It states that if there is stretch of land that is required for effectuating the land Pooling Policy but the concerned landowner is not coming forward, only then we would take the land through land acquisition. The cost of such acquisition has been, right now, placed on the Consortium itself. This would, in effect, mean that a landowner has the option to choose whether he wants the market forces to apply or he wants to be a part of the Consortium. Otherwise the cost has to be borne by all the landowners. So, there will be lot of groundwork that would be required to be done amongst the landowners, to actually come up with the final plan in which all of them are ready to participate.

However, I would not get into the approval processes, at this point. We are anticipating much safer sustainable neighbourhood zones and the projected housing availability would effectively help us in a big way to solve the problem of housing that the city is facing right now. I would like to close at that.

Interjected by Dr Das: Can you tell us what lessons does it hold for other states?

I would say that we are at a stage where we are actually experimenting and we have taken a lot of lessons from other states. Right now, it is very difficult to say what are the lessons, but we have many examples of land pooling. Amravati is also working on land pooling. The Town Planning Scheme of Gujarat for instance, is on a very limited scale, we are not going to do pooling in phases, not saying that we take 100 sectors and 200 sectors. The kind of scale at which we are trying to implement this Policy is much bigger. There are a lot of lessons we



ourselves might be learning when we actually get on to the ground, if this comes through. I mean, we always had this discussion even when GST started, there were lot of difficulties. We do not know the next step or the problems we will be facing, so we cannot predict anything. The lessons to be learnt are for the concerned states, because they are already having certain policies, how that is getting implemented and, you know, what will be the takeaways from policy is something I may not be able to say. But, we will be learning and we are expecting that if the participation is good, this could be a breakthrough model as an alternative to the LARR Act. The kind of issues, as I have been learning from other speakers, if we have to keep addressing them, planned development will never take place. The housing requirements and facilities that people require—none of these will come on the ground, if we go through extensive social impact assessments and keep paying compensation. In the kind of scenario Delhi faces, we may not be able to proceed far. If pooling works out, it is definitely going to help us. We will play the role of a facilitator/regulator to ensure that planned development takes place. The participation will be the key deciding factor. This policy has been under preparation for a while, people are looking forward to it but it is very difficult to say anything at this stage. But, yes, from the urban development perspective, this Policy could provide us with a lot of solutions, with lot of improvements, which can take place over a period of time. Right now it is a framework and, yes, we have to take it forward. I would like to end with these thoughts.

Joyita Ghose: Thank you very much ma'am, for sharing your insights on the challenges for procuring land for urban development, specially, in the context of Delhi.



And, also for sharing details about DDA's Land Pooling Policy which is quite an innovative and an alternative mechanism for procuring land, post the 2013 Act. We will now take a short break for tea and come back for a Question & Answer session.

Q&A Session

Joyita Ghose: If you have made it through the end of the day, now you can share your thoughts and your own experiences with land procurement. You can also ask the panelists any questions that you may have.

Mr Sebastian K V, Don Bosco Art & Science College: My concern is from the grassroot level. I have been a part of the SIA team and we do come across issues. The first question is, when the Act says, 'partially affected or fully affected,' how to define partially affected and how to define fully affected in case of a house? The front three rooms are lost, kitchen and the hall is left, whether it is half-door crossed or half-door open, that is the serious question. I was part of an SIA study for land acquisition

for Sabri railway station from Angamari to Totukurai, around 40 km. I am asked to do SIA, and halfway through, it is rolled back. Last 20 years, the people have been put into trouble. I came across a family where the lady had been waiting for compensation for 17 years, she passed away last February without receiving any compensation, without any treatment. So, these are the harsh realities, I have lot of queries, I would like to know the criteria for deciding partially lost in case of a house. If a residence is partially lost, can the family survive in the same house? I also have another query regarding two cents of land, I have altogether 2 cents and one and half cent is taken and the remaining half-cent is left over, I cannot use it, what shall I do? The government will not take it. When these kinds of situation comes what to do, how to appease the people and the real owners and pacify them? This is my real concern I would just like to hear from somebody.

Mr Vinay Kumar Singh At least for the national highway projects, it has been taken care of. Suppose, a person is having only two rooms or three rooms in his house, one kitchen and one bathroom, then the whole house is taken



and he is compensated. If it is a big villa, having 13, 14 rooms, or six and seven rooms, the situation is assessed by the local authorities as well as the National Highway authorities. If the individual is not satisfied, then there is the provision for arbitration, then the final verdict of the arbitrator is obeyed by the National Highways Authority of India. When a national highway passes through any place, that individual can go anywhere for his livelihood, because even a small shop can make his life. In India, if you travel right from Kanyakumari to Jammu & Kashmir and from Rajasthan to Kolkata, I feel that the entire habitation is along the road. I hope that satisfies your question.

Mr Sebastian K V: I have got a couple of questions. We are talking about the linear projects, national highways, railways, pipelines, transmission lines, underground lines, why don't you have a policy to create a corridor or a super expressway where all these utility lines for the railways or highways and the corridor are available with the government for leasing out or renting out to the respective utilities agencies, so that the process of infrastructure development, especially, of these linear project can be expedited. Are we thinking along this line?

Mr Vinay Kumar Singh: Sir, the constraint is the budget. India does not have sufficient budget to fund such a corridor that each and everything is there. We plan for the minimum requirements of the user. Suppose, traffic density is too high at present which cannot be handled by a certain specification of road, then we go for widening. If widening is not possible there, then we go for elevated structures. So, our planning is need based, we do not have sufficient fund and that's why we are planning in a piecemeal manner. If sufficient fund is available for any

dedicated project like Delhi, Baroda, you will find a fully developed corridor.

Mr Sebastian K V: The Ministry of Road Transport and Highways (MoRTH) and other ministries of Gol can have some sort of a special purpose vehicle or some sort of a nodal agency where budget pooling can be conducted. These have been done in many other countries also and we are aware of that.

Mr Vinay Kumar Singh: Sir, the Ministry of Road Transport and Highways has a Committee for budget pooling but unfortunately, the fund availability is very less. A lot of different work is still pending which is yet to be initiated and then finalized. So, the planning is budget-oriented and planning is done as per the budget which is available with us.

Mr Sebastian KV: Else, we shall be living with this current situation of the infrastructure projects. If something can be done, it is the time to do it. Like energy, the transmission, the gas pipelines, all have to come up in a big way.

Mr Vinay Kumar Singh: Yes, it has to, there is population pressure in India and our requirement is increasing day by day. So, your suggestion is good, but once again everything comes to the adequate availability of fund which at present is the only constraint with us. All problem lies with the fund. Two months back I saw some notification by National Highways Authority of India (NHAI) for this Delhi–Mumbai super expressway having a corridor of 400 m width. If I am not wrong, this 14 lane expressway you are building from Delhi–Mumbai on 400 m width, you can straightaway give some of the portions to other utilities holders for laying those utility linear lines.

Mr Ravi Kumar: Is there any proposal for this?

Mr Vinay Kumar Singh: Yes, the proposal is there, that project is itself a wholesome project. It has incorporated the maximum possible utilities, all along this project, like pipelines, sewer lines, parking plazas, road side amenities. You will find all these things in this project, if you go through that DPR, it is well made.

Ms Naphisha Kharkhongkor: I am from the state SIA



unit of Meghalaya, this question is directed towards Mr Singh as we have a couple of projects with you, especially Jaiconoor. I have one question and one observation of the SIA. Coming from a state, which is a Sixth Schedule state, we have a lot of land that needs to be developed. However, what we have discussed the whole day, it's been very mechanical. Land is taken as a resource. But, sometimes, land is more than a resource, it is a way of identifying with yourself. With this project we have come across some areas which are community lands and we have sacred forests and graveyards. You can relocate the grave, however, the community forest is an issue. People have refused to move the sacred forests. Without the movement of these forests I don't see the road going through. What do you propose to do about it?

I am also from a state where there has been no cadastral survey and land records are spotty, at best. When we go from one village to the next, we involve the village durbar at every step, because we cannot identify the proper landholders and the stakeholders, so, we have to depend on these headmen. When we identify owners who don't have *pattas*, can you suggest, a way to expedite the process of giving them the land *pattas* and thereby, expediting the process of land acquisition?

Mr Vinay Kumar Singh: Ma'am, the situation in Meghalaya is quite critical. The LA process is not completed there because of the problem you have just enumerated. I hope the issue of sacred forests can be taken care with the elevated structures that we are planning to make there. Very limited land will be taken and once the structure is constructed, that land can be used again for the sacred forest purpose. Regarding the

patta that you are talking, it is being dealt by the state administration. The present Government is formulating some methodologies to deal with this. Generally, we are not aware how they are dealing with it, it is the problem of the state government, national highway or MoRTH cannot do much in this.

Mr Gaurav Kumar, Senior Manager, Environment in NHPC:

As you all know, hydropower projects are located in remote locations in northern and north-eastern states. It needs a substantial quantum of land because, the hydro project involves large-scale submergence and the land is also required for the project components. My question is general, maybe, we can have a discussion on it. It is a suggestion based on the experience of implementation of the hydropower project. We feel that certain procedures in The RFCTLARR Act involve duplicity. Like, the SIA process, recently, as part of the environmental clearance procedure, we had to undertake the socio-economic survey for the preparation of the R&R plan. Before the implementation of the RFCTLARR Act, before 1 January, 2014, also, we used to undertake this procedure and, since the projects involved environmental clearance, we have to undertake the SIA, socio-economic survey and all that forms a part of the R&R plan. Now, with the enactment of RFCTLARR Act, we have to conduct the SIA as part of the LA process. Then, again for the environment clearance we have to do SIA, because these two processes are independent. Can we have a mechanism where we can do the socio-economic survey, like what we have been doing till date? Can there be a mechanism where we have a common framework for the social impact assessment, both for the LA as well as for the environmental clearance process? The second issue is the multiple public hearings. In the morning sessions, Dr Mahesh Kumar from FICCI, he was also of the same opinion. As we can see, in The RFCTLARR Act we have to do six public disclosures and two public hearings, one at the time of SIA and, once the SIA is done, then, at the time of preparation of R&R plans. One public hearing is again required as a part of the environment clearance process, that is also mandatory and, then, the most cumbersome process, the Forest Right Act. Suppose, a project involves 20 gram sabhas, or 30 gram sabhas, then 30 gram sabhas meetings have to be arranged, they are not less than the

public hearings. We have experienced many problems in our projects where we are at loggerheads with the gram sabha. They make demands and we have to take heed of all those demands. So, can there be a common hearing, a common public platform, where we can have all the public hearing for LA, the Forest Rights, as well as the environment clearance. Thank you.

Mr Subhash Chandra: This is a very good observation, particularly, with respect to meeting the requirement of the three Acts, this LA Act, Forest Rights Act and Environment Protection Act. Till the time the processes of the Acts or Rules are not merged, the processes have to be done separately. The authorities are the same for LA and Environment Protection Act, the Gram Sabha has to take the decision. In the Forest Rights Act, the onus comes on the project proponent, basically they have to educate the people. Unfortunately, because of past experience, people do not have much faith in the bureaucracy or in the development agencies because of the lack of development in their area. If there is lot of advocacy and people's engagement, they will see the benefits coming, then the situation will change. It will take time, but the people will themselves come forward and say, "please do the process, we support the project"; due to past experience of delays and poor implementation of various projects, this has happened. These public hearings give an opportunity to educate the people and inform them that it is in their interest. The north-east region is lagging behind, particularly with respect to infrastructure. I think it will take time but gradually the process has to converge. I think the project proponent should also approach the concerned authorities to merge the processes. Each ministry follows their own procedures, so it becomes difficult to bring convergence but it will happen, maybe it takes time. It is a very genuine observation, I feel at least parts of these public hearings, these formats have to be common, so that you can put the information collected, or the consensus reached in certain parts, in another format also.

Dr Abhijit Guha, Senior Fellow, ICSSR, at Institute for Development Studies, Kolkata: Does NHAI have any kind of research wing and research component to see how their work is impacting the people. For instance, forest has a very large research wing, forest department



always reassesses what it has done. Is it true that NHAI has no research wing?

Mr Vinay Kumar Singh: Yes it has.

Dr Abhijit Guha: So what are the findings?

Mr Vinay Kumar Singh: In respect to which case are you asking for the findings?

Person 4: No, the impact of these highways on the lives of people. Do you have any kind of journals or publications? I have been reading the journals which are being published by the Indian Roads Congress and Central Road Research Institute (CRRI). They are conducting all types of studies, like EIA and SIA studies. The journal carried a research finding about the use of local material in the construction of road. Such type of research is being carried out by CRRI.

Dr Abhijit Guha: I see, ok.

Mr A M Goswami, Coal India: My question is to Vinay Kumar Singh. Actually my question pertains to the implementation of LARR Act, probably you are acquiring land under NH Act.

Mr Vinay Kumar Singh: NH, Act, 1956

Mr A M Goswami: After the enactment of RFCTLARR Act, Removal of Difficulties Order, 2015, Schedule I, II, III benefits are to be provided to the affected family. I believe in National Highway you may have a large number of primary livelihood losers and affected families whether you are providing them some R&R benefits as

per Schedule II of RFCTLARR Act, if not, how are you escaping from punishment ?

Mr Vinay K Singh: First of all, who says that we are not following the Rules. Second, the provision of LA mainly deals with the landowner, but, in case somebody is not a primary owner of that land but his livelihood is depends on his settlement on that land, in that case the primary owner is given a certain amount of compensation, and the person who is dependent on the land is also being compensated with proper resettlement and rehabilitation. It is being done and it is well recorded. If you want, you can ask for information under the Right to Information.

Dr Nirmala Buch: I want to raise two points. One, this question was raised about multiple assessments done by different agencies, the SIAs really evolved from EIA, earlier the EIA used to be conducted and it developed into SIA, generally, the procedures and approaches will be similar. The three Ministries should find a way of doing them together, I think, people and institutions will appreciate and it will all take less time as well.

Secondly, the success depends on who is doing the SIA, if they understand the people, if they understand the issues, it will be much better. We have found in Madhya Pradesh that wherever SIA has been done well in that area, it has helped a lot because they could develop a rapport with the people. So, I think there should be training programmes for those who would be involved in SIA, because this will be a continuous project. If we have people who are not pure consultants, but those having a specialized understanding of people's issues, understand their approach, and also the departmental concern, it will make a lot of difference as to how it is done.

Mr Vinay Kumar Singh : Ma'am, in case of NH projects, all the DPR consultants have to mandatorily engage NGOs related with the subject, like EIA preparation and SIA assessment. I don't doubt the capability of NGOs, so whatever recommendation they give, we follow.

Dr Nirmala Buch: I just raised the issue because the people are concerned. I don't want to get into the NGOs, etc., but there should be people who understand, for instance, the Fifth Schedule areas, Sixth Schedule areas,



tribals and forest rights and all that, who understand these issues, then when they go to the people, it will make a lot of difference. We must develop a cadre of people, whether in the department or outside, who should be able to do SIA well, it will make a lot of difference to your work. The work will be done faster, people will understand and people will go with it, we have experienced this in some of the cases.

Mr Vinay Kumar Singh: Ma'am, till now, such a problem hasn't come to me.

Dr Nirmala Buch: I am not only talking about you, I am talking about everyone.

Mr Subhash Chandra: In fact, these clearance processes is known to the regulatory agencies, so they themselves will not be doing this, I think the regulatory authority will try to distance itself from this process. TERI has been the pioneer as they have started this training on SIA. I think that will improve the capacity. Now, they have a small programme for one week, it can be given to a larger audience and with longer duration, more case studies will make a difference.

Mr Vinay Kumar Singh: We are giving training to the local youth for their livelihood, since they don't get an opportunity to get trained themselves. We are giving training on how to operate the machines, how to carry out quarry operations, methodology for road construction, etc. So, we are training them, it has been incorporated in our DPR and it is a part of the programme. Approximately, 3000 youth have been trained in the last one year. Today, every human being wants to earn money, wants a livelihood, so we are teaching them, we are showing

them the way and we are training them on how to get the work, how to perform it and how to get the money.

Joyita Ghose: I think ma'am's point on building capacity for conducting SIA is very well taken. I think everyone will agree that we do need to build capacity on how to conduct SIAs.

Mr Vinay Kumar Singh: Yes

Mr Subhash Chandra: Universities can take these as a Degree or Diploma programme.

Dr Sameer Rai, Social expert from the World Bank: I have a question for Mr Chandra, and some clarification too. Sir, I found in certain cases, recently, I was on a mission to Himachal Pradesh, that claims under the FRA have not yet been settled. This is delaying the LA process for the solar park. Do you envisage any role of the Forest Department in expediting the process of LA.

Mr Subhash Chandra : Actually, the Forest Department is not in the picture. If you see the contents of the Forest Rights Act, it is entirely with the Gram Sabha, they have to recognize the rights, next, it goes to the sub-divisional level committee and, then, to the district level committee. I think the project proponent has to actively take up this matter with the district level committee or Gram Sabha, so that their case is put up for the recognition of Forest Rights Act. The people are using their forest rights for very long and unless somebody prevents them from exercising their rights, only then the question of determination rises, otherwise people take it for granted. I fully agree with you that this process must be completed, but there is no time limit for that, so unless there is some spark or a cause, Gram Sabha has no interest in it.

Dr Samir Rai: Sir, Gram Sabha has no role to play right now, because, for a plot of 794 hectares, there are 39 applications pending with the Kaza SDM for one year. In the last one year, he has disposed two or three applications. So, how to expedite the process because it is the forest rights?

Subhash Chandra: The Forest Department is nowhere involved.

Dr Samir Rai: Sir, the Forest Department claims ownership over it.



Mr Subhash Chandra: Ownership is of the Government, we are just the custodians.

Dr Samir Rai: Sir, you are part of the Government, it is a Department of the Government.

Mr Subhash Chandra: Department doesn't own the forests, it is only protecting it for the people of the country, so the people also have some ownership on it. The SDM is not doing his job, it is really difficult to say anything here.

Dr Samir Rai: Sir, LA for a project of the size of 400 MW is stuck due to the incompetency of the SDM.

Mr Subhash Chandra: That's why I cannot comment, unfortunately, it might not be priority for him.

Dr Nirmala Buch: We all work in system, it is not anyone's responsibility individually but if you go to the area, get people together and have a discussion and suggest some work, people will come forward and say, "Okay we will do it". I work in the field, in various capacities from top to bottom, it is important that people's problems are solved. We have to find ways of working at different levels, we should address the problems. We are all doing



our work, no doubt about that, we are doing excellent work, but let us see where the problem is and solve it. You cannot dictate to the SDM but you can get work done from him, that's what I am saying.

Mr Subhash Chandra: Ma'am, in the country more than 2 million forest rights have been recognized. So, if something is not happening somewhere, I think the right way is to reach out to the public representatives or the district administration to emphasize the need for expediting it. Otherwise, it is in the administrative jurisdiction, nobody from outside can say that you do this job, because this is a quasi-judicial process.

Dr Samir Rai: Okay, thank you sir. Now coming back to your question about the structures, as per the Act, and when we add to it the World Bank Policies, if you acquire 75% or more of a structure, then the remaining 25% of the structure has to be paid for by the LA authorities. About the residual land, you are talking about, whether it is defined as economically viable or unviable depends on the type of land or the land use and location. Every district has the minimum landholding size, you can get it from the District Handbook and you can determine the economically unviable part of land, as per the economic category and, if it falls under the economically unviable category then compensation has to be paid for it.

Vinay Kumar Singh: Sir, sorry to interrupt, I am speaking on the lighter side. There is no land that is economically unviable, adjacent to roads. After a road is built, people don't want to leave even an inch of land.

Person 8: Good afternoon sir, I am working in National Hydro Power Corporation. Most of our projects are in Arunachal Pradesh, where USF land, that is, Unclassified State Forest, is diverted under the Forest Conservation Act, 1980. Land acquisition was going on under the previous Act and, after the enactment of the new Act it is still going on. But there is duplication. In USF land, there is a one-time payment for land diversion under the Forest Conservation Act. When we are acquiring land under the New Act, we pay compensation to the affected people and we also pay for the rights and privileges to the affected person. This kind of duplication is not going on anywhere in India.

Mr Subhash Chandra: In fact, this peculiar situation is in Arunachal Pradesh because of Unclassified State Forest which constitutes over 60% of the forest cover and most of this USF have community rights. Either, they have to be settled under the Forest Rights Act or through LARR, because the demarcation of USF area has not been done and the community, I think, will not like the demarcation to be completed. They will try to show ownership over the USF but, as per the Government record, they are still forests, so you have to get clearance under the Forest Conservation Act. At the same time, for settling the rights of the local community, you have to go through the Forest Rights Act.

Person 8: There is no landownership there, they are claiming on the community basis, hundred per cent you can say, the Scheduled Tribe people are residing there and their claims are already settled, yet they claim rights under the LARR Act. The issue is not the settlement of rights, the main query is how the duplication is going on. If it is the USF land, then, it is a matter of diversion, no land acquisition can take place. But here both the things are happening, LA is being done by the state Government and the forest diversion is going by the Central Government. The Central Government has to take action.

Mr Subhash Chandra: It would be difficult because of historical reasons. The tribal people were living, particularly, on the higher hills. In all the cities which you visit, there are in the forest area, still the land has not been diverted, it is forest area. Still, the people continue



to own buildings and agricultural land, so you have to compensate them and you can't change the situation. I don't think there is any possibility of addressing this issue under one Act.

Mr P K Halder, BCCL: Hello Sir, my first question is to Chandra sir. Sir, in Jharkhand the Company has 300 acre of land. The District Forest official says it is forest land, DC is saying it is revenue land, cultivator is saying it is my land, as per CF record this is *garib rath* land, and we have the patta, so it is our land. My next question is to Mr Singh. Near our land, Rajganj–Ranchi NH is being constructed for which very large amount of compensation is being paid, compared to the compensation we pay. Therefore, it is difficult for us to acquire land there.

Mr Vinay Kumar Singh: Sir, this is a political problem. Because of politics, the compensation has become four times. This is beyond our control, Parliament has control over it. The provisions laid down by the Act can be changed only by the Parliament.

Mr Subhash Chandra: As far as you are talking about forest or revenue land, if the state government has earlier submitted an affidavit to the Supreme Court, defining it as forest area and, somewhere in the past, if this land was notified as forest, then it is forest land. The DFO may not be wrong, maybe, the revenue authority have not mutated this land to the forest, but once it is notified, even under a preliminary notification, then it is forest land. The state government has to address it, the Central Government doesn't come into the picture unless it is forest land. The forest officers and land revenue officers have to sit



together to find a solution. If you want to divert this land then only you can approach the Central Government. It is up to the state government to settle the issue but they have to define their own priorities.

Dr J Rath, NMDC: I was in Bastar and Bailadila for ten years as General Manager, NMDC. In that area the issue is forest land versus revenue land. In the township area, the forest land was encroached before the Forest Conservation Act came in 1980. At that time the revenue department regularized it in the name of the persons. At that time the Jabalpur High Court said that people have the revenue right, if it is not the mining lease area. This is naxal area, in many parts Government cannot enter, when public hearing of Gram Sabha takes place, activists come from outside, villagers cannot participate, even when they have the voting rights.

The issue is now in Bastar, where we have a brand new steel plant, Jagdalpur plant of 3 million tonne capacity, we have invested Rs 20,000 crore. We acquired 1000 acres of land for the steel plant land in 2010-2011. After 2013, when the second phase acquisition of land began, Chattisgarh government said that you have to follow the state R&R Policy, you have to give compulsory employment within two years of acquisition of land. The plant is ready to be commissioned, 1000 people have been given employment, in addition, to the huge compensation.

To solve this problem, we have invested about hundred crores per year for the last 7–8 years in Jagdalpur and Bailadila, out of the CSR fund. This way, we earned public



support. However, Tata Steel, Essar Steel, and other steel companies did not get an inch of land for their steel plant. We got 2000 acres of land, now the state government has decided to privatize the steel plant. Tata Steel wants to buy the brand new steel plant. The affected people got compensation and employment but they are not qualified and have not completed their schooling, they may lose their jobs if Tata takes over the plant. So, now they want their land back, they are saying that we don't want a private company to take our land. So, it is a political issue. My point is that under the new Act, in the last five years we have some very good and bad experience. My point is unless the R&R Policy of the state government is delinked from the R&R policy of Gol, you continue to face this problem in states.

Dr Malvika Pal, Ambedkar University, Delhi: My question is to Mr Vinay Kumar Singh. The ordinance was passed on the ground that investment projects are getting stalled, and therefore, the 2013 Act should be changed. Now the matter is with the JPC. You told us that there has been no problem in LA, particularly, because of high compensation being paid. We know from various studies, that in the past, compensation has been the main source of litigation. Once that problem is solved, the entire problem is solved. Why is it that the JPC has not taken cognizance of the fact that such a large organization as yours is not facing any problem with the 2013 Act? The fact that higher compensation has actually solved a lot of issues and people are actually coming forward to give their land and they want development. So why is it that JPC is not taking cognizance of this fact, this is one question? We also know that states across

India are diluting the Act so, if, land is being acquired more easily through the 2013 Act, then why is it that the states are moving in the opposite direction. Do they want more contention or protest or is it that they want to short sell the farmers or the landowners, and take away the land at lower prices? I wish to hear from you on this.

Mr Vinay K Singh: Ma'am, frankly speaking, no comments.

Dr K Ratnabali, Assistant Professor, Faculty of Law, Delhi University: I have a question for Madam Meena Vidhani. I just wanted to understand the importance of Delhi Master Plan, 2021 and how it is binding on the construction underway in Delhi? We have acquired land for construction of Delhi Metro. After the land was acquired by metro, there was surplus land which was given by auction to some company, which is now planning to build a residential complex. The Floor Area Ratio (FAR) was changed to a residential colony. So, is the Master Plan not binding? If it is, then how has DDA allowed the change, that is the second question? The third question is, what is the meaning of contiguous zone, because, you said that, in case of land pooling, you have to have at least seventy per cent contiguous zone. If I look at the practical side, people don't even know who is living next door, so how can people come together and show their willingness to give up 40% of their land, for a particular project and how to deal with those kind of families who are not ready to give up, and they may be occupying a very central or significant place, from amongst those people who are expressing their willingness to give up their land?





Dr Meena Vidhani: I will go with the last question first, because that is related to the Land Pooling Policy, which I just spoke about. The first thing that we need to know is that this is not going to be in the existing urban areas, this Policy is not applicable in the existing urban areas, meaning, thereby, the issue which you mentioned in your first and second question, is often areas where already development has taken place. But this is applicable in green field areas, the zones that are specified are towards the periphery of the city, these are essentially green field areas, right now agricultural activity is being carried out and, except for the village *abadi* area, most of the land is available for development. So these five zones are essentially for green field developments under the Land Pooling Policy. We are identifying sectors, we will be preparing plans and sectors will be delineated. This information will be available in the public domain, it will be advertised through public notice or on the website for everybody to know my land falls in this sector, and I can be a part of this pooling process. Secondly, it may be difficult for me to talk to him or to five, ten people out there if I consider these are all the stakeholders, so we will be setting up a portal in which any landholder of any size can express his willingness. That information will be collected by DDA and mapped, we are in the process of preparing the sector and zonal development map. This information will be available to us, and we will start making assessment of the parcels for which people are coming forward. If we don't get the seventy per cent land



together or if we get fragmented land parcels, it will be very difficult for us to plan infrastructure, return the land, there a lot of issues. We will only take this forward once we get seventy per cent land contiguity. We have given them the option, they don't really need to interact with each other when expressing their willingness, they have to come together later. When that 70% target has been achieved, we come together to form a Consortium and knowing that the rules of the game have to be till the end, we move with the understanding that we have to work together for the returns to come. The first and the second issues are related. The Master Plan exists, I may not be able to give you too many details about a specific case, which, I think, is being examined by DDA. The development in any existing area has to be in consonance with the Master Plan, Zonal Development Plan and the layout plan of that area. It is a statutory document, there can be no violation in terms of the norms and all the controls are laid down. If higher FAR has been given, right now, I cannot give you any answer, unless I know the facts of the case.

Joyita Ghose: Thank you ma'am, and thank you to all the speakers, who came today and who took time out from their schedules and shared their very valuable insights with us. I would like to thank the members of the audience who raised some very useful questions. I would like to request Dr. Das to hand over a token of our appreciation to all the speakers for joining us today. Mr. Chandra, Mr. Singh, Dr. Giri and Dr Vidhani.



KEYNOTE ADDRESS BY SHRI JAIRAM RAMESH, MEMBER OF THE RAJYA SABHA

I am delighted that TERI is undertaking this five year retrospective of a tongue twister of an Act, I wish the title was shorter, most people forget the title of the Act—The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement. First, I would like to place this Act in its context. This Act, this legislation was one of the seven rights-based legislation that was passed between 2004–2014. That is why it is called the Right to Fair Compensation and not just called Land Acquisition Act, 2013, which was the easiest way of naming this law. I think, it is important to understand why the Right to Fair Compensation came. If you recall, in 2005 the first of the rights-based legislations was passed, the Right to Information Act, now called the RTI.

Day 2, Session III ‘Social Impact Assessment: From Policy to Practice’

Joyita Ghose: This session is on social impact assessment (SIA), from policy to practice. The objective of this session is to try and understand the challenges as well as the benefits of conducting social impact assessments in the land acquisition process and also, to understand the implications of the gradual SIA policy reversal by state governments. The keynote address for this session will be delivered by Mr Jairam Ramesh. Sir is a member of the Rajya Sabha and was instrumental in the formulation and passage of the LA Act of 2013. He is often called the architect of this landmark legislation. I now invite Mr Ramesh to please come to the dais, sir’s address will be followed by a panel discussion, moderated by Mr Arun Kumar, Former Secretary, Ministry of Mines.

The panelists for this session will be Dr Debarata Samanta, head of the state SIA Unit—Chandragupta Institute of Management Patna. Dr D Suresh, Divisional Commissioner Gurgaon, he will join us shortly, and Mr V S Bhisht, Executive Vice President, PTC India Financial Services Ltd. I now invite Mr Jairam Ramesh to please deliver the keynote address.

That was followed by NREG Act, subsequently renamed the MGNREG Act in 2005. In December 2006, the Parliament enacted the Forest Rights Act, which was basically oriented towards giving ownership rights to land to tribals and traditional forest dwellers. In February 2009, the Right to Education Act was passed which was basically a continuation of an earlier commitment that had been made. So, this was the first generation of the rights-based legislation. The second generation of rights-based legislation started in 2013, actually in 2011. But, it took two years to finalize, first was the National Food Security Act; that was passed in 2013. Then, came the Right to Fair Compensation and Transparency in LA Act. The seventh and the final legislation in this series was the Right to Livelihood and Dignity for Manual Scavengers, which were all passed in September–October, 2013. So, this Act that we are discussing today not only replaced the 1894 LA Act but was also a part of a series of rights-based legislations in the decade of 2004 and 2014.

The second point that I would like to make is that there was universal political consensus, there was almost unanimity, across the political spectrum that the 1894 Act had outlived its utility and that a new law had to



be passed. It took two years for this Law to be passed, and there were extensive political consultations. It went to the Standing Committee which was chaired by the current speaker of the Lok Sabha with the representation of all political parties. The Committee submitted its report and 26 out of the 28 recommendations of the Standing Committee were actually accepted. Then, when it came for discussions in the Lok Sabha and the Rajya Sabha, all political parties supported the legislation, barring the AIADMK, which took the view that this was an infringement of the right of states. But they didn't oppose the Bill. Constitutionally, land is a State subject but land acquisition is a Concurrent subject and, therefore, they took the view that LA really is a state subject. And, they criticized the very concept of LA, Act but they didn't oppose the new Law. So, it was a law that was welcomed across the political parties, examined by the Standing Committee and for almost 10 months, two all-party meetings were held, extensive political consultations took place across the country and this law became a reality.

Now, this law has five foundational pillars. The first is prior-informed-consent, that you will not acquire land, the word is acquire, not purchase or lease or pool. You will not acquire the land without the consent of the landowners, that was the first foundation principle. The second foundation principle was the enhanced compensation, the compensation was very niggardly under the old law and gave a lot of discretion and arbitrariness to the State. We needed to make compensation far more attractive and more remunerative to landowners, and, therefore, there was this four times increase in compensation in rural areas, and a sliding scale, up to a maximum of 2 in urban and semi-urban areas. The third foundation principle was social impact assessment, which is what we are discussing this morning and I will discuss the SIA somewhat in detail, after I finish this overview of the law.

The third was SIA which really asks the question, what is the land being acquired for, how much land is required, who is affected, who needs to be compensated, and who needs to get rehabilitated and resettled.

The fourth principle was resettlement and rehabilitation, its actually the other way round, first you rehabilitate then you resettle, so it is Rehabilitation and Resettlement (R&R). We didn't have a law till 2013, we had a policy on R&R, and originally, during 2005-2006, the idea was we will have two separate Laws, we will have one law for LA and one law for R&R. But I took the view that we should make it a part of one law to make it comprehensive. So the fourth pillar was a statutory backing to the R&R provisions, which should accompany LA. These were both employment-related and all the other provisions that were part of the R&R policy were embodied in the law.

The fifth principle was, actually, a result of the unanimous demand made from across the political spectrum, the ruling party, the main opposition party and all regional parties, that we must have a window for retrospective provision as far as the law is concerned. Normally, when we pass a law it is never retrospective, it is always prospective, it is always for the future, but one of the arguments that were made, very strongly, both in the Standing Committee and in the Parliament was that this new LA law has been on the anvil for a really long time, so, people were acquiring land at very cheap rates, in the hope that when the law gets passed, they will make a windfall profit by selling off this land, that profit should actually accrue to the landowners and not to the people who have acquired the land. And, therefore, there must be a reasonable retrospective window and the reasonable retrospective window was five years, because that was the period over which the law was being discussed, so Section-24(2) became part of the Law. It basically said that, if, within a period



of previous five years, a landowner had not taken compensation under the old law, he would be entitled to compensation under the new law. So this is retrospective window.

These are the five pillars of the law that we have in place today. The new Government is trying to make major amendments in three out of these five pillars, they kept two pillars intact, they kept the compensation and the R&R pillar intact. They tried to amend the consent pillar as well as the social impact assessment measure and they tried to amend the retrospective provision. They tried to pass the Bill in Parliament, it didn't go through, there was opposition from across the political spectrum. The Government then resorted to Sec-254, sub-clause (2) of the Constitution which says that, if there are two laws on a Concurrent Subject, normally, the Central Law will prevail, however, the state Assembly can pass an amendment which is repugnant to the national law and, if that amendment is approved by the President of India, then it becomes a part of the Statute Book. This was a sort

of a back door way of carrying out the amendment, the Central Law remains intact, however, Gujarat, Maharashtra, Telangana, Tamil Nadu and Haryana have resorted to Section 254(2) to carry out amendments in the three pillars of the five pillars which I have mentioned. So this is a broad overview of the Act and its salient features.

Let me now turn to the SIA, one of the most controversial aspects of this law, which we are discussing this morning. Why was SIA actually introduced? It is important to understand that under the new law, consent is not required for LA for government projects. In fact, I was very keen and I fought till the last to make sure that every project, government or private, should go through the consent route, because this notion that government acquires land only for some noble or social purposes has been proved completely false in practise. However, my own colleagues in the Government didn't agree, there was a lot of opposition to this from the state governments. Finally, we allowed Government acquisition for public projects, for Government projects not to be subject to



the consent route. So, that was a compromise I had to make. However, on one area, which I didn't want to compromise was SIA, and SIA is essential, under the law, right now, for all projects, without exception. We have a former Secretary, Rural Development sitting here, Mrs Nirmala Buch. The idea of SIA goes back, there is a long history to this in state governments and in the Ministry. The reasoning was that our track record of LA has been extremely unjust. Governments acquire more land than they actually need, governments acquire land in the name of a public purpose, but actual purpose turns out to be private. And, governments acquire land and provide compensation, which is not only far below the market rate but many people don't actually get the compensation. Hence, was born the idea of a social impact assessment. What is the essence of this social impact assessment? Firstly, what is the land being acquired for? I think it is incumbent on the government acquiring the land to declare clearly what the land is being acquired for. Secondly, how much land is required and how much is being acquired? This is a very important question. Because, there are many instances, over the last 50–60 years, where land has been acquired in a profligate manner, it has not been utilized. A classic example of this is in Ranchi, some of you must have seen the complex of Heavy Engineering Corporation Ltd., Ranchi, where thousands of acres of land were acquired, I would say, in a criminal manner. It was acquired in 1950s and 1960s and, only a few hundred acres have been used. There are extremely large tracts of land today that have been encroached upon, and the biggest encroacher, I am sorry to say, is either the Government of India or successive Governments of Bihar and Jharkhand.

So, one, what are you acquiring the land for? That's the first question that you are answering. The second question that you are answering is how much land do you actually require and how much land are you going to actually acquire? The third important question that the SIA answers is, who is impacted by the LA? Because, our experience in Singur, in Nandigram and our experience in other LA such as POSCO, and other projects like Vedanta in Odisha, across the country, is, when land is acquired not only do landowners get affected, but, more importantly, people whose livelihoods depend on the land being acquired also get affected. These could be landless, these could be bataidars or it could be people in the informal sector of the economy, as we have discovered in the case of Singur. So, the SIA is supposed to answer this question—who is affected by the land acquisition? We know that landowners are obviously going to be affected by LA, that is, a sort of, first order impact, but, there are second or third order impacts as well that are not immediately evident. I want to underscore the fact that is often forgotten, in the 2013 law, compensation is provided not just to landowners but compensation is also provided to livelihood losers. That is one of the fundamental principles of the 2013 law. How do you identify the livelihood losers, the informal sector workers, and the landless? That can be only accomplished through SIA carried out in a transparent and consultative manner.

The fourth important question that has to be answered by the SIA is, what is the nature of public purpose for which the land is being acquired, and will there be acquisitions in future, because, one of the features of LA in this country that we have seen is that land gets acquired, the value of land appreciates after acquisition but the benefits of that



appreciation do not accrue to the original landowners. And this creates a lot of tension between those whose land is being acquired and those who are benefitting from the appreciation of the land value.

Thus, was born the idea that we should have, like we have an EIA, we should have an SIA, which is carried out by the gram sabha. Of course, they are not going to do it on their own, but it is going to be done through other professional and administrative channels, but the idea is that, in six months' time we should have SIA before the land is being acquired, to answer these basic questions, which, very often our experience says, have been taken for granted. We know in state after state, the Governments have not only acquired land in excess of the requirements, but Governments have also acquired land and have put it to a completely different purpose. The state of Uttar Pradesh for instance, in the first years of the 21st century, acquired land, thousands of acres of land in the name of public purpose and it was turned over to private builders. We have the experience in Greater Noida and places not very far away from Delhi, which we can see. So, this is the background to SIA. It has proved, amongst all the five principles of the Act that I mentioned to you, to be the most contentious. Actually, the amendment under Section 254(2) carried out by Gujarat, by Maharashtra, by Telangana, by Tamil Nadu, proposed to be carried out by Rajasthan, but it was not passed in their legislature, relates to the SIA. And the argument that was given by the state governments was that it adds to time, it is time consuming, it becomes a politically contentious process and, that, we could do without it. What has happened is that state governments have resorted to Section 254(2)

to exempt government projects from SIA. They have not removed the provision of SIA for non-government projects, for public-private participation (PPP) or for private projects. But, government infrastructure projects have been exempted from the SIA provision of the new law.

So, this is where we are at, and, as I said, it is important for us to understand the background to SIA. If the government's track record of LA in the last 50-60 years had given confidence to both the landowners and livelihood losers that land is being acquired in a manner that is commensurate for the purpose for which it is being acquired and fair compensation is being paid, I think much of the agitation that we have seen in state after state on LA would not have happened. Right now, as we speak, there is a LA agitation underway in Gujarat and Maharashtra, against the bullet train projects. I, myself, have visited these areas. People are asking the questions that I have asked, how much land do you need? How much are you actually acquiring? The compensation is not really the issue, because they know that the law provides for enhanced compensation. And, will they get the benefit from the appreciation in the land value, knowing, of course, that this is a government project.

Let me conclude by saying that much of the criticism of this new law has come, in my view, from a lack of appreciation that this is a law for land acquisition. It is not a law for land purchase. In fact, one of the purposes of this law is to discourage acquisition of land since people should have bilateral transactions in land and it is not possible immediately because of the asymmetries of power and information between the land buyer and



the land seller. It is also not possible because it is not realistic, because the state of land records, being what they are, and the existence of land mafias in state after state, but the law provides for land leasing and for land pooling. In fact, Amaravati, the new capital of Andhra Pradesh, is a good example of land pooling. So, this Law is only for acquisition. In fact, let me share with you that the Standing Committee of Parliament, which had 31 members, chaired by Sumitra Mahajan, their various recommendations, and, another recommendation that I did not accept, was that land should not be acquired, even for private projects as also for PPP projects. They went, in fact, to the other extreme of saying there should be no LA per say, for non-government entities. If the governments want to acquire lands, they should acquire lands. These were the two recommendations, one for private projects and one for PPP, that the Government didn't accept, otherwise, all the other recommendations were accepted. In my view, this law is meant to discourage acquisition of land by Governments for private or PPP projects. And, to the extent possible, use other alternatives, including, direct transactions between landowners and those who require the land.

As far as the amendments themselves are concerned, I think, it's very clear that in the tenure of this Parliament there will be no amendments to the main law. However, state governments have carried out amendments, as I have mentioned to you, five or six of them, but only to the provisions related to informed consent and also for SIA. Largely SIA, but some states have dispensed with the requirement of written consent of 70% of the landowners in case of PPP.

All in all, I think, this has been a way forward, and I will end by saying that when the law was passed, it met with immediate criticism from two types of people. It was criticized by Medha Patekar and company who believed that this law was not progressive and it was also criticized by the Confederation of Indian Industry (CII) and Federation of Indian Chambers of Commerce and Industry (FICCI) on the grounds that the law was too progressive, and restricted economic activity. I had an occasion to say somewhere that, if both Medha Patkar and FICCI are unhappy, there must be something of value in this law, because this is a middle path law. One of the lessons that I have learnt is that the essence of good policy making is not to achieve balanced satisfaction but to achieve balanced dissatisfaction. If everybody is dissatisfied in an equitable manner, I think, we are on the right track and that's what I believe, as far as this Act is concerned. Thank you.

Joyita Ghose: Thank you very much, sir, for sharing your insights on the key provisions of the law, specifically the SIA process and some of the major issues which have arisen in the last five years. I am sure some people in the audience will also like to ask you some questions. We will have about ten minutes for any question from the audience.

Dr Abhijit Guha, First, I thank TERI and then Mr Jairam Ramesh, for coming today. I have several observations on this new law since I have been working in this area for a long time. First, why under the 'appropriate government', the local self-governments were not included? I mean the Panchayats and the Municipal organizations. In my view, this seems to be a violation of the 73rd and the 74th amendments of the Indian Constitution. Under the 'appropriate government', this law has only included the Central and the state governments, but not local government, this seems like an anomaly for me. Second, why is there no separate provision for corporate social responsibility in this law. I believe that there should be a mandatory provision because, when you acquire lands for the corporates, I have seen through my own field experiences, that where undulated, unfertile, wastelands exist, the corporates choose the fertile agricultural lands. I tried to investigate why this happens all the time and what came out from my own research in Midnapore,



West Bengal, was that the corporates choose the fertile land, because they are already levelled and prepared, so that they incur lesser costs than if they chose the wastelands. So, this sort of thing has to be addressed in the law. Suppose, a corporate chooses infertile land, it can be given some sort of tax relaxation. All the time I have seen that the corporates choose the agricultural land, rather than the wasteland. The third point is, all the time we hear that multi-cropped land will not be acquired, this has also been incorporated in the new law, as if, the mono-cropped lands do not serve any purpose, as if, when you say that when the multi-cropped land will not be acquired, your business is done. But what are the irrigation departments doing, is it not the policy of our government, that all mono-crop should be transferred to double and triple crops. So, when you allow people to acquire the mono-crop land, it is as if they do not serve any purpose. In fact, I have seen through my fieldworks that mono-crop lands do provide ample food security to the people who were cultivating those lands. There is virtually no provision in the Act to safeguard mono-cropped lands. The fourth thing that I would like to point out is that there is no provision for financing for development in this law. I think, Mr Ramesh, you are aware of Michael Cernea's recent works on financing for development where he proposes that in case of private industries, the land losers should be made the shareholders of the company. There are many examples of this outside India, this law has virtually no provision for financing for development and the long-term benefit sharing by the PAPs. Thank you.

Mr Jairam Ramesh: I will just give a very brief answer. There is a whole section in the Act, on the Gram Sabha,

this has proved to be very contentious, between the state governments and the Centre. We introduced it and we found that it is actually observed more in the breach, than in actual practice. However, according to provisions of the Law, the Gram Sabha has a central role to play in the acquisition of land. It is the Gram Sabha, which is actually responsible for the social impact assessment, number one. Particularly, in the Scheduled Areas, without the consent of the Gram Sabha, and the Palli Sabha, the land cannot be acquired. Unfortunately, as part of Section 245(2) amendment, states like Jharkhand, for example, the provision is no longer mandatory. It is no longer mandatory to get the permission of Gram Sabha, the word 'consultation' has been interpreted to mean that we will inform them, it is not being interpreted to mean 'concurrence'. The word 'advise' has been interpreted in such a manner that it is no longer prior-informed-consent and this is how land is being acquired in Jharkhand. This is part of the problem which has bedevilled Jharkhand, this is one of the reasons why there has been a lot of agitation against the amendments. Of course, this is a part of a larger slew of amendments that they have carried out, it has proved to be contentious. Actually, the Gram Sabha has a central role to play in the acquisition of the land. But, I must admit to you that this was over the objections of many regional parties, you know, who believed that their rights were being actually curtailed, see, land figures in the State List, LA figures in the Concurrent List, it doesn't figure in the list of responsibilities of the local governments. And, most state governments, in fact, all state governments, irrespective of political parties, want decentralization from Delhi but are not prepared to do decentralization within their own state. The regional parties in Parliament were quite clear that maximum they would countenance was that Centre can pass this law, taking recourse to the fact that it is part of the Concurrent List, but they were not prepared to cede the responsibilities, further, to local governments.

So, this continues to be a big political battle, I think, we have not heard the last of it. As you know, we have a separate CSR law, as part of the Companies Act, we have had three years of experience. But, one of the CSR that is embedded in the Act relates to R&R, we can take the argument that resettlement and rehabilitation is very



much a part of corporate social responsibility. One of the things, which, again, became very controversial, states like Madhya Pradesh where opposed to this, because of the large irrigation projects that were coming up, the Law says that the R&R process must be initiated, not completed. R&R takes a long time, so it must only be initiated, as part of the LA process. I remember an official from Madhya Pradesh saying that R&R provision would really impede progress, in a large number of irrigation projects.

You are right, the law doesn't make farmers the equity shareholders in projects but there are two provisions in the law, one, if the land is not utilized, there was a debate whether it is five years or whether it should be ten years, but, if my memory serves me right, it is now ten years, if the land remains unutilized, it reverts back to either the land owner, if he can be identified, or his relatives. Else, it comes back to the state government, it comes back to the land bank. In fact, this was a demand made by the Chief Minister of West Bengal at that time, if I recall correctly.

However, there is a second provision. Land was being acquired, this law became a reality in 2013, a lot of people had started acquiring land in 2008, 2009, 2010, 2011, 2012 in the expectation that there would be a new law, they acquired the land at very cheap rates and now, they would sell this land and obviously make windfall profit. The law provides that 40% of that gain will go back to the landowners, the person from whom the land was being acquired. I agree with you, this equity sharing thing was discussed and, finally, it was not found practically feasible, there was no support for it, across the spectrum, I am afraid. I think I have answered all your questions.

Ah sorry, multi-cropped land, yeah, there is a separate provision. In fact, this is one of the objectives of SIA, to determine if the land being acquired is mono-cropped, double-cropped, multi-cropped. If you may recall, in the Act there is a specific provision, which says that multi-cropped irrigated land will not be acquired, in fact, an upper limit is put on the acquisition of this land. This provision was objected to by Punjab and Haryana, they didn't want this provision. However, we tried to convince them, let there be this provision. The argument given by Punjab and Haryana is that all the land that is being acquired in Punjab and Haryana will be multi-cropped and irrigated land. So, one of the purposes of SIA is to determine the nature of the land being acquired, whether it is mono-cropped or multi-cropped, and, if I recall correctly, the Act says that it will be acquired only as a demonstrable last resort, only after exhausting all alternatives, would this multi-cropped irrigated land be acquired. And, how do you convince people that you have looked at all the options, that is only through a SIA.

Ms Archana Goswami, Gujarat Institute of Development, Ahmedabad: We are working on the process of documenting research of Ahmedabad-Gandhinagar metro project for which land is mainly acquired in the urban area. The Act is not talking about compensation to the encroachers, especially, on government land, like these squatters, huts, *jhuggi/jhopri* people. Most of the metro projects in India are funded by some international organization like Japan International Cooperation Agency (JICA) and the World Bank, these funding agencies talk about giving fair compensation to the encroachers as well, whereas it is not there in the Act. Is it mandatory for agencies to adhere to the requirements of international agencies, or are we diluting what is said in the Act? Thank you.

Mr Jairam Ramesh: First of all, who is an encroacher, and again, I come back to SIA. The purpose of the SIA is to establish who is an encroacher and whose livelihood is dependent on the land being acquired, and, I suspect the state governments are very liberal in defining who an encroacher is, in order to evade their responsibility of giving compensation to the people living on the land that is being acquired. I don't know the particular case that you are referring to, but I have experienced in other projects

that people who have been defined as encroachers, are actually not encroachers, they are people who depend for their livelihoods, different ways of livelihood, by either working on the land or in some informal sector, occupation related to the land being acquired. Again, the idea of SIA was to make a comprehensive evaluation, of not only the landowners whose information is easily available, but, more importantly, of those people, like, you say, are encroachers, who have been living there for reasonable period of time or who have come there recently in the expectation, that they would get compensation, this is the entire purpose of the SIA. There is nothing in this law which says you must follow international norms. I think the law is sufficiently clear, I think Gujarat Government has dispensed with the SIA, yea, they have, as part of amendment under Section 254(2), so the SIA has been removed, so the question is academic in Gujarat. But the fact is, if the law was honestly applied, you would have done SIA on these hundreds of families who are living in this land and you would probably find that they may not be encroachers, they may not have tenancy rights, they may not have firm pattas but their livelihoods are certainly dependent on land that is being acquired and, according to this law, compensation is to be provided even to them. There is no differential rate of compensation, the compensation is the same that you are providing to the landowners.

Mr Asim Choudhary, ONGC: I have also been engaged in land acquisition at National Highways Authority of India when it started the large-scale land acquisition in 1997–2001. During that time, the ADB and World Bank had funded the projects and, at that time, this problem of encroachment and, whether to pay the squatter, had cropped up. My question to you, sir, is that the 1894 Act, except for the four pitfalls—one was determination of compensation by the Collector; second, the urgency clause; third, R&R clause; and, fourth, is the social impact, the 1894 Act was complete in itself. The 1894 Act has seen large acquisitions for steel plants, coal mines, etc. Except, of course, the provisions of the SIA and R&R was missing. The nation had a separate R&R policy, what actually was the trigger that we made a new law? Why couldn't we make a small amendment, incorporate R&R, reduce the power of Collector and a couple of more

things? Sir, why didn't we amend the 1894 Act, which was largely beneficial? Thank you.

Mr Jairam Ramesh: Well, you were not here when I made my opening remarks as to what were the foundational pillars of the Act. The 1894 Act was a draconian Act, completely draconian, given that it reflected the spirit of its time. I am not criticizing it, it was based on the principle of 'Eminent Domain', and the fundamental difference between the 2013 Act and 1894 Act is that we have abandoned the principle of 'Eminent Domain'. I think 1894 Act was amended twice, it was amended, if I remember right, in the '60s, it got amended in '85 or '86. In fact, I considered why not just amend the 1894 Act and put enhanced compensation, which everybody was asking for. I beg to disagree with you, I think the track record of our LA-1894 Act has certainly enabled the state Governments and Central Government to acquire huge amounts of land on which they are sitting. Rajasthan State Industrial Development and Investment Corporation Ltd (RIICO) is sitting on 70,000 hectares of land, you don't need any more land to be acquired in Rajasthan. Land has been acquired in Maharashtra, Gujarat, Karnataka, and Jharkhand I have given the example of HEC. Yes, the 1894 Act enabled large amounts of land to be acquired for both public and private sector projects, it was easy acquisition. I wish that the acquisition had been done in a more sensitive and humane manner as we are still grappling with the consequences of that acquisition. I have seen irrigation projects in Madhya Pradesh and now in Chhattisgarh, where people have been displaced not once, but, they have been displaced twice and this is all a consequence of the 1894 Act.



It was a solution and it was certainly a route that people talked about, but let me tell you, this entire process of re-drafting the Act started in 2007; between 2007 and 2013, there was not a single political party which asked to amend the 1894 Act. Every political party said, "*Naya kanoon banna zaroori hai*" (It is necessary to enact a new law). You just look at the debates in Parliament and in the media, but no one spoke about just cleaning up the 1894 Act, everybody said, we need a new law to provide for compensation, R&R and so on. Yes, it is a route we could take, I mean the British did many good things, but I don't think the 1894 Act was one of them. I am sorry, it gave huge powers, had it been used properly, I would have no problems with it. I have seen projects, where land has been acquired under the urgency clause, the land is yet to be utilized. I am sure many of you know that this Land Acquisition Act doesn't apply to national highways, coal mines, railways, power transmission projects, and defence. However, there is a provision in this law, that one year after the passage of this law, provisions of this law will apply to those laws, that have not happened. Actually, if you take the total land being acquired in this country, it is a very miniscule portion that is being acquired under this Act. Much of the land that is being acquired is under The Coal Act, The Railways Act, The Power Act, The Defence Act, The Atomic Energy Act, but we had made provision that there would be replication of the benefits of this Act into those laws, but that has not happened. However, I am happy to say that Mr Gadkari has taken the compensation part from this law and made it applicable for highway projects. It has not happened in railways, it has not happened in defence, it has not happened in power, but it has happened in NH, it's not happened in coal, has it happened in coal?(in the background, yea, yes sir), so the enhanced compensation has come in coal that's good, that's a big step forward. I think, to that extent, this law has had a positive impact.

Joyita Ghose: I think the questions can go on until lunch but we do have a panel discussion also planned. Sir, if you don't mind, we will delay the handing over of the token to the end of the discussion, since you are staying. I now invite the other two panelists to also join us on the dais, Dr D Suresh, Divisional Commissioner of Gurgaon and Mr V S Bisht, Executive VP, PTC India Financial Service Ltd. I invite Mr Arun Kumar to please begin the session.

Mr Arun Kumar, Former Secretary, Ministry of Mines:

This session is devoted to a discussion on the SIA, how it has played out in the last five years. We have a group of panellists, Dr Samanta, Dr Suresh, and Mr Bisht, who bring various perspectives to the table. I, rightly so, as a generalist bureaucrat, am supposed to moderate the discussion, as it were. So, to begin with, I would request Dr Samanta, because he comes from the generic policy framework, to lay the ground for the discussion.



DR DEBRATA SAMANTA,
Assistant Professor, Chandragupta Institute of Management, Patna:

I would first like to thank TERI and Mrs Das for inviting me. I have been associated with some SIA projects in Bihar and Dr Das told me to share my field experience, so I would like to share my field experience only. We have already talked about the policy and the paradigm that has been changed through this policy, so I will not touch upon it. One of the main pillar as identified by sir, we introduced SIA strategy to invite people to give their views and to identify who are actually getting affected by this acquisition process. Definitely, SIA has created a space between people and the government for deliberations and discussions. But if I share my field experience, I think that deliberation, discussion should start much before, not at the start of the project, it should start at the time of designing the project. We found in one green field project that a huge chunk of land had to be acquired and people of the villages adjacent to where the landowners reside, were extremely violent and resisted the move. There was threat to life, suicide, and people were not ready to



give away their land, whatever be the compensation. Because, they think that their livelihood will be affected. When they got the design, they expressed the view that those who are going to lose their land will get some compensation, but if the project is implemented, it will stop the flow of water to the other side with the result that the land of adjoining villages will become infertile in 2–3 years. So, they will lose in both ways, neither will they get compensation and they will end up with the infertile land. Moreover, if the project gets implemented, the adjacent villages will be inundated with water, throughout the year. So, there was extreme resistance from the people, not only the particular village, but all the villages. So, my question is, can we think of inviting people at the time of designing the project? In this case, they not only resisted, they came out with alternative design. They said, instead of taking this part of the land, if the other part of the land is taken, the land to be acquired will be very less and people will be happy to give away their land. But, changing the design at that stage had a high stake. The design is an extremely technical component, which cannot be changed at that time, though the SIA has the provision for asking for a change of the design. This is my observation.

I am sharing my experience in Bihar. Bihar has very old land records, based on a cadastral survey conducted almost hundred years back. In 1960s, some revisionary survey was done in some districts but, that has not been concluded. However, in 2011, the Government has passed another Act for quick survey. The Land Survey and Settlement Act, 2011, provides for quick survey with modern technology. However, the progress has been slow, the data has been uploaded for one district

only. In the last 100 or even 40 years, there have been transfers of land, inter-generational as well but these are not reflected in the mutation. So, whenever we go for SIA, we get multiple claimants for a single plot, because they are actually legal heirs of that particular plot. Identifying the right person is very difficult and everyone claims that their land is being acquired, or their land is not getting acquired, depending on whether they would be benefitted or harmed by the project. If the land data can be updated, the problem can be greatly reduced. Definitely, there is a paradigm change, where the indirectly affected people have been acknowledged for compensation for the first time. However, when we visit the field, the sharecropper just disappears, because of the law of adverse possession. Section 48 C of the Bihar Tenancy Act says that if any sharecropper holds a piece of land for twelve or more years, he has the occupancy right on a particular land. Due to this, no landowner recognizes his sharecropper. Sharecropper has lesser voice as compared to the landowner, so, it is extremely hard to identify the actual sharecropper, and he doesn't disclose that I am the sharecropper on that particular plot of land. Also, you will find no one is an agricultural labourer, everyone claims that he is doing cultivation on my own land and all his family members are working. So, sharecropper, agriculture labour, they just disappear from the field. This way, one of the pillars which actually acknowledges the indirectly affected people to receive compensation, gets diluted. There are talks about diluting Section 48 C, as well as NITI Aayog has come up with land leasing policy, where they consider the transfer of some right to the sharecropper so that they can get access to credit and relief in case of a calamity.

These are the main observations. We have come across a case where the project has been implemented in 2011–2012 but compensation has not been paid. We have to re-initiate the formal procedure for acquisition after 6–7 years, and definitely the land loser should be compensated as per the new Act, because they have lost the opportunity to till their land, also, they have not been paid the compensation. I don't know how this illegal thing can be addressed. The Act doesn't say anything about this. Apart from this, we have the capacity gap from everyone, from our side also, we as a SIA unit. I'll just brief you

about Bihar's SIA unit, wherein the RFCTLARR Rules have been formulated in 2014, and three institutes, research and academic in nature, have been identified by the government to conduct SIA. I am an Assistant Professor at Chandragupta Institute of Management, Patna, which is one of the SIA Units. Definitely, there are capacity gap, from our side, as well, as from the government side. SIA is more than just a report, it is not like, please send us the report so that we can attach and forward the file. I think I will conclude here. Thank you.

Mr Arun Kumar: Thank you very much, Dr Samanta, for initiating the discussion about what the SIA Unit feels on the ground, which is very essential to offering solutions. I would now request Shri Bisht because he comes from the finance world and, as some people say, money makes the world go round, so let us see what he has to say.



MR V S BISHT,
Senior Vice President, PTC India Financial Services Ltd

I have got a small presentation. I come from the Non-Banking Financial Sector. Though, we are not directly involved in land acquisition but we fund a number of power projects. You know that power projects have to acquire large tracts of land, so we come indirectly into the

picture. To give you an example of the intensity of land in power project, if you talk about thermal coal power project, it is 0.75 acre to 1.5 acre per MW. It can vary by 10%, higher the size of the unit, less is the land required on per MW basis. Land is mainly required for the power block cooling water, coal handling, evacuation, railway siding, colliery, etc. As you may be aware, hydro is site-specific, less land for run-of river, more for storage type. Land is basically required for the reservoir submergence. In hydro power projects, power plant and colony require very small part of the total land required for the project. The wind and solar are the latest in the power projects, everyone is going for solar and wind. If we talk about the land required, there are two types of model. In wind power projects, one is, you go by the footprint basis and, the other model, is to go by contiguous piece of land which takes care of the inner roads and evacuation system. The land required is 1.5–2 acres per 'Wind Turbine Generator' (WTG) in case of footprint basis and if you go for contiguous land then the land required would be more, about 2.5–5 acres per WTG, so it is a huge amount of land. If you are going for 100 MW of wind farm, the land requirement can go anywhere from 200 acres to 300 acres, or up to 500 acres of land. If you go for solar photovoltaic (PV), the land required is 4.5 acres–6 acres for the land mounted, of course, the roof mounted panels don't require land. The land is mainly required for putting up the solar panels. In case of solar thermal the land requirements is slightly more. So, for solar PV you need a lot more land compared to coal or even hydro project, so it is land intensive. I was listening to the previous speaker, and, somebody in the audience also said that multi-cropped land should not be acquired. In case of Punjab and Haryana, where a number of solar plants are being set up, land is very costly so it is being taken on lease. Basically, it is all multi-cropped fertile agricultural land, otherwise, you don't have any other option since barren land is extremely less there.

In case of thermal and solar projects you can have some kind of flexibility while in case of hydro, it is site-specific, the land has to be taken where the dam has to be built, wind project is also site-specific though there can be some kind of change in the location of wind turbine. In nut shell, power projects require huge tract of land



and purchasing a 1000, 2000, to 3000 acre is next to impossible. It may take ten years or fifteen years, nobody has got so much of time, so people generally go for the acquisition mode only. The project proponents say, yes, we have got the land but when the implementation begins, then issues come up. I will be sharing one or two examples of this.

Now, when we go as a lender in a project where land is purchased, there are issues with land records. They vary from one state to another while in many states, land records are not maintained, there are language issues, because in some states, it is in their local language and then you have to get it translated and translated versions are generally not reliable. The stamp duty is also a big issue, because, in some cases, it is a percentage of the loan amount. If you are going for Rs 1000 crore loan and stamp duty is 2%, it comes to around Rs 20 crores, which is a huge amount. We also have to see that there is no issue of pending litigation. As a lender we have to see all these things, it is necessary to take responsible decision, to make sustainable investment, to create long term value for shareholders, positive economic and social contributions, prevent disruption of operation. Once we start funding the project, we don't want these issues to lead to stoppage of work. Sometimes, project developers will acquire partial land and they will say, "okay, now we can go ahead." But one or two years down the line it can lead to stoppage of the work. And, once you have taken the loan, it becomes a very unviable proposition for the promoters as well as for the lenders also.

When the projects get started, sometimes, there is resistance and agitation from local community. We have

seen in Odisha, in Angul, NTPC had constructed a project way back in 1980s. Recently, when we went for lending for a small project of 20 megawatt, the villagers came and said, "We will not allow you to build this project, because in 1980s NTPC had acquired our land, but they have not yet compensated us". Can you imagine 30 years ago an incident had happened and they are not allowing you to go ahead with a small project now? So, people learn, and if an issue is not resolved at that point of time, it can emerge for a subsequent investment.

You know R&R issue, prior to this Land Acquisition Act, R&R was a big issue in hydro projects. We have seen in the case of Sardar Sarovar project and in Shri Maheswar project also, there was a lot of local community resistance, given the extent of submergence. The Sardar Sarovar project was delayed, the Shri Maheswar project is still stalled, when the project gets stalled, the interest on the loan drawn starts building up and the project becomes totally unviable due to accumulated interest leading to high project cost. Another problem is the higher amount of compensation, vis-a-vis what was considered in the feasibility report. Sometimes, the project proponent will consider one cost of land in the feasibility report but actually that cost is much higher. And after the LA Act, 2013, compensation cost has become very high, so it may make our projects unviable. In case of solar project, as far as possible, we should use barren land. I gave you the example of Haryana and Punjab, where it is next to impossible to find barren land but people are putting up solar power plants there.

So, when we fund power project, we always see whether the land has been obtained through acquisition, whether the SIA was conducted, whether, both physical and economic displacement have been taken into account, whether the process was transparent. We are into sustainable lending which is aligned with the IFC Performance Standards (IFCPS). We have a check list for sanctioning loans in line with IFCPS, we go over it one by one to see whether the project developer has followed the norms. When we talk about acknowledging social risk, during construction stage, there is occupational, health and safety risk to workers, land contamination due to improper handling, some leakage, blast or dust emission may take place, and air pollution.

I will also talk about the risks during the operational stage. In case of thermal project there will be pollution on account of gas emissions, there will be increase in tariffs, there is a lot of traffic which totally changes the fragile ecosystem. In case of hydro-project there is loss of habitat, biodiversity, fragmentation of ecosystem, impacts on flood dependent ecology and agriculture, because every year, when floods come it brings new soil, but this stops after the construction of dam. In case of wind power, though it is supposed to be renewable, there is some noise impact, there is impact on local birds and migratory birds. Solar power projects need a lot of water to clean the panel and, generally, solar power plants are put up in a barren land, where there is scarcity of water, so that is a big issue.

Now, I would like to share some experience. In Punjab and Haryana, the solar panels are being put up mostly on fertile land, in case of Uttar Pradesh and Bihar, land is not available due to high density of population, there is lot of political interference also. In case of Odisha, I have shared one example where there is a lot of agitation from local community. In case of Karnataka, there is a deemed NA for land for renewable projects, but it still takes a lot of time. In Maharashtra there is a cap on direct purchase of land. In Gujarat, Tamil Nadu, Andhra Pradesh, Telangana, Madhya Pradesh, we don't find much issue in LA. In the case of West Bengal LA is a big issue. East Coast thermal project in AP has been stalled for the last 3 years, two times it went for environmental clearance. The interest on loan built up and the cost went totally haywire, promoters ran away, lenders stopped the project. Athena dam is in Arunachal Pradesh, it is a very large project, Rs 2000 crores have been spent, there are some issues of LA, ecosystem is fragile, forest is getting submerged, again, it is in a stalled condition. In North-Eastern states there are issues of multiple ownership, in Nagaland, the land is not in a particular name, it is generally in community name. When you go for LA there, it becomes very difficult to finalize the compensation, because, once you give compensation to one person, the next day another person would say, "No, I am his brother, you have to compensate me also", so it goes on like this. I think that is all I want to share.

Mr Arun Kumar: Thank you very much Mr Bisht. We

acquired an overview of what the industry thinks vis-a-vis LA.

Joyita Ghose: We will now continue with the panel discussion.

Mr Arun Kumar: I would now request, Dr Suresh, Divisional Commissioner, Gurugram, to talk about his experiences, from the states' perspective.



DR DAMMU SURESH,
Divisional Commissioner, Gurugram

The Act itself, he has been its architect, exemplifies sensitivity for the farmer and people whose lands are acquired. I completely agree with his observation that the governments have always got it wrong with regard to urgency, acquisition proceedings and the way land has been acquired. I think, it was long overdue what was done in 2013, I entirely agree. At the same time, there is also a possibility of unfair enrichment sometimes, for the farmers. Let's not think that the farmer is the victim in all scenarios, so that is not correct. I am the chairman of the land price fixation committee in Gurugram. In Gurugram Division, there have been instances where we have seen that the prices of certain lands are in the range of Rs 15-20 crores. If you are going to be paying that kind of money to the farmers, it is not always that the government wants

to acquire, there are many scenarios where farmer wants the government to acquire the land. I think, somewhere, the rates of Gurugram are comparable to or more than New Jersey, or maybe, Manhattan. But the solution to that would be scientific valuation, which I will be talking about in the course of my talk here.

I have been asked by Preeti to talk about land records basically, but, I will not limit my talk merely to Haryana. I would say that in the entire country, the land records management is in shambles, it is managed terribly. I would admit that, even though, as the Revenue Head, I am responsible for that division. The system is so bad that the solutions have been difficult to come by and this has been compounded by lack of seriousness on the part of the state governments. I am not saying it with regard to Haryana only, Haryana has probably done better, but across the country there is lack of seriousness with regards to computerization of land records, and the seriousness that needs to be given to the resolution of issues associated with LA has not been there. I have problem with their pilot projects, these pilot projects started somewhere, here and there but never get completed. Important projects are not completed, we are always in experimenting mode for years together, for 25 years. Computerization of land records had started in Haryana in 1991, in many states, more than 30–35 years ago, but it is still not complete. I have yet to come across a single state government that has completely computerized land records in a scientific and comprehensive manner. I mean there is a lot of talk about land records computerization being implemented very effectively, in places like Karnataka and Andhra, I belong to Andhra Pradesh. I don't know what has happened in the last three-four years, but, prior to that, when I had visited things were not very good. Maybe, in last two-three years if something extraordinary has been done, then I don't know. So, people are really struggling. I think, it is the responsibility of the government that the records are safe, scientific and people should get value for their land and government should be in a position to say that x, y, z they are the owners of the land. We need to move from presumptive titling to conclusive titling, it is easier said than done. Government should be in a position to say that 'x' is the owner. If you don't do that then there



is a lot of chaos, law and order problems, litigations. In our country, the approach towards land records management is presumptive, the revenue authorities say it is not their responsibility to say who the owner is, you have to presume the owner, the presumption comes by a set of records, jamabandi, mutation, kasra, Girdawari, etc. This presumption that you are the owner, I think, that is creating a lot of confusion. The revenue department says that the responsibility of finally declaring who is the owner of a particular land is with the civil court. The civil courts are not sufficiently trained, the lower courts, I mean, with regard to revenue law. And, looking at the average time taken in this country for resolution of civil disputes, it is documented as twenty years, from the lowest court to the Supreme Court, it puts the common man in a miserable condition. It is not the responsibility of the civil court to declare somebody as the owner. It should be the responsibility of the government, to declare that x,y,z is the owner of a particular piece of land, and if they have any problem they can go to the courts later on.

Here, we have a situation where the revenue law says the mutation doesn't confer any title, Jamabandi is only a presumption of truth, registration of deed is only the registration of a document. The Registration Act, 1908 only says that registration of deeds is registration of transaction. There is nothing within the revenue law or within the registration Act which says that after the registration, somebody has become an owner, this is unfortunate. Same property can be registered a number of times, there is no check, there is no linkage of land records and registration. Haryana has achieved about 90% linkage between records and registration,



nonetheless, there is a lot of scope for manual intervention. Even in the states where computerization has happened to a large extent, still a lot of manual intervention is possible, a lot of discretion is given to the revenue officials. Supreme Court decides a matter and a patwari is still trying to say that it doesn't work this way or that way. The problem is, we are using a lot of terms in Urdu. Although, most of the north Indian towns now use Hindi, but a lot of terms like jamabandi, Kaal, etc., are Urdu terms. The common man doesn't understand *kasra, kevat, katauni, jumla, musurka, malkan*. I think, we need to move towards what is intelligible, what is comprehensible to common man, maybe, to foreign investors, why don't we move towards Hindi and English. People should be able to understand clearly, the excessive use of Urdu words gives a lot of freedom, to the patwari, and the tehsildar and the kanugo, who are not well versed in revenue law, but the mystic that is created, the terminology gives the revenue official tremendous amount of power to confuse the common man. This gives them a lot of discretion and the helpless common man says, "here, take this money and do my work". We need to have a scenario where common man is able to understand. Why this beeghe, bismil, marla, karam, kanal? I think you need to move towards the metric system. Even if you want to use those terms, use them in the brackets. Across the board these terms are continuing, people don't understand, foreign investors don't understand, even government officials don't understand, Collectors don't understand, revenue law is so complex. I don't consider myself as an authority, having worked in Gurugram, as Divisional Commissioner, for the last three and a half years. I can only say that I have been a witness to this confusion, and the helplessness of

the common people. I presented proposals to the present Government to do away with it and the Government is still considering. There are a lot of vested interests and revenue department people are very powerful people, it is not very easy to get across your point of view. I am part of the system, but why am I not able to do it, I am not saying with regard to Haryana, but with regard to the entire country. And the revenue officials, patwari, kanugo, tehsildar they have not adopted this computerization project. Nearly 90% of the revenue officials, lower level people, from tehsildar to Patwari, are not computer savvy. This is compounded by their attitude of not wanting to learn computers. So, I suggested to the Revenue Minister that we should post only those patwaris and kanugos who are computer savvy, at least in sensitive areas, the Government is considering. These people think that it is not their job, it is not their project, they do not own this project. Their indifference is compounded by NIC which never completes any project, it starts and leaves it in between, never completes any project. If you ask, "*Kya ho raha hai, 90% humara ho gaya*" (what is happening, 90% of our job is over). 90% is over, we have been hearing this for the last so many years, so we have given up. Pilot project should be completed, they remain pilot for decades all together, I am suspicious about these pilot projects. While we say it is the responsibility of the government to ensure property, government is not able to secure its own properties. There are instances where government properties are sold, resold. I think time has come for conclusive titling.

Our revenue records are not linked to banks, so, banks have no idea about what the revenue records are, they say registration must be done, otherwise we will not give you the loan, not realizing that registration is nothing. You can have a piece of property registered ten times, by ten people and transacted ten times. People have no idea, banks have no idea about the mess of revenue records, everyone is running behind registration. They think, once registration has been done, it is safe. They are not safe because land records and registration are not linked, banks have no idea, courts have no idea, courts are sometimes staying mutation processes without understanding. So, there is a lot of confusion with regard to land records and the time has come to do something

about it. I am told that on account of mismanagement of land records, we are losing 1.3 % of the gross domestic product (GDP) growth rate annually. In urban areas, about 5% of land is embroiled in title and boundary litigation and in the peri-urban area it is about 28%. These figures are pretty phenomenal. I was also told that the most significant bottleneck for ease of doing business is land records mismanagement. So, how do we improve things. I think we need to, one, computerize the land records completely, end to end, we need to have linkage between land records, registration processes and cadastral mapping. Cadastral mapping is in a mess. The problem with government functioning is, whether it is NIC or the satellite people, they don't complete anything, they start and then they leave us midway. You cannot do anything, they will give excuse about some problem with regard to technology. We need to have cadastral mapping linked to GIS, geo referencing. The points, mapped by Survey of India, with reference to states, most of them are lost. In Haryana, 50 % of the points are lost, people in the satellite institutes need to identify. It is not difficult but lot of hard-work is required to be put in. You need to urgently find those Survey of India points, reconstruct them with the help of technology and satellite, etc., link them all and then create secondary points, tertiary points, further on, link them to GIS, so you have a complete integrated land records management system. Then the problems will be resolved, there won't be law and order problems, litigation. The scientific way of doing geo referencing will reduce the margin of error from the textual records, by 1% to 7%. In Haryana, we have done it in the tehsil of Manesar, errors were reduced from 7% to 0.1%. The public and the government will get phenomenal benefit. We will be able to identify encroachers, we have not been



able to do it manually. But Government has to take this as a priority, now the prioritization is not happening, bureaucrats and politicians, they don't have time for it. It requires a lot of detailing, you need to post officers dedicated to this project. More often, the Director of Land Records it is an additional charge, it's a punishment posting. The time has come for setting up an authority with regard to land records management. In the district, it should be an officer who is fairly senior and he should not be given any other work. We have to agree that the governments have not taken the issue of land records management seriously.

The way forward is obviously conclusive land titling. A lot of people say it is not possible in countries like India, but I think we need to move towards it if we want to become an important country for foreign direct investment (FDI). Even with all these problems, we are attracting the maximum FDI in the world. I was told, we have surpassed China, we are clocking something like 50 billion dollars annually in terms of FDI. We can create better investment climate for the country, if we move towards conclusive titling. What is conclusive titling, I think all of you would know, but I would briefly sum it up, it is a single window, a single agency which will handle all the land records, corrections, dispute resolution. Now you have multiple levels, Tehsildar, Patwari, Kanugo, SDM, Collector, Commissioner, and the civil courts. This is a single window which will redress all the land records management issues, and, it is based on what is called the mirror principle-what you see with regards to records is what you get at the ground level, there is no mismatch. It is also based on another principle, called the curtain principle, at any given point of time, there is true depiction of ownership and whose responsibility would that be, that would be the responsibility of the authority which is called the conclusive titling authority. Now, it will be the responsibility of this authority to insure against a loss to any individual or private person, indemnify for the loss. Let us say the government declares 'x' to be the owner of a particular piece of land, then due to some reason-mistake of the government itself, that person is declared not to be the owner, he would be compensated by the government. I think this is a very significant principle, it is a part of the Conclusive Titling Bill of 2010.

The other aspect is title insurance. There is going to be a land titling tribunal, this tribunal will replace the courts, up to the High Court level. This tribunal will hear all the appeals and dispose them off, this tribunal would have the entire information and it's trained in this particular work, therefore, they are better than civil courts. Today, civil courts are not trained, I have judges coming to me and telling me, "can you give us a talk about land records, it is very complex," but they are passing judgments. Once the civil courts decide a case, revenue official is supposed to implement it. I have judges coming to me and asking me, "what is this, jumla, musarka, malkan etc.?" The setting up of a specialized tribunal will be a very positive development.

What else does this Bill entail? Valuation, today we have complex and bizarre methods of valuation. I am the Chairman of the Valuation Committee, it does not go on a scientific principle, it is based on registrations, it is based on Collectors' rates. There is a Collectors' rate, which is the official rate of the government, then there is the market rate, which is something called black-white, it is very complex. You cannot have two rates, I think, Evaluation Bill will do away with this.

There will be scientific evaluation of a property, at any point of time, anybody can know the valuation of a particular property, which can be placed in a public domain. Foreign investors cannot be duped, Indian and domestic investors cannot be duped. Today, in the absence of this valuation, the rates are bizzare, somebody is selling for Rs 2 crore an acre somewhere, then suddenly, somebody, says Rs 5 crore. So, there is no method of valuation, it is whimsical and chaotic. Scientific valuation in the public domain will go a long way in ameliorating the problems of the common man, investors, it will improve governance. Conclusive titling, proper management, computerization of land records will actually improve governance. One of the significant aspects of governance, according to me, is land-records management. I think, police and revenue are two most important departments of the government. I can't speak for the police, but, for revenue department I can say, in spite of being the most significant, it is often the most chaotic government department. I was told that litigation against the government amounts to 70% of all

the cases in various courts, and, most of them are linked to land records. So, if you have conclusive titling, you have a tribunal, if you have computerization of land records, I think, litigation will significantly come down. It will increase the value of the property, it also expedites LA, there is no confusion with regard to rates, so the process of LA will become shorter and quicker. I will end now. I thank Preeti and other organizers who have given me this opportunity to interact with you all. Thank you.

Mr Arun Kumar: Thank you very much Dr Suresh. It was a very thought provoking talk as to how the difficulties can be resolved at the ground level. Of course, there are various levels of maintenance of land records across the states.



MR ARUN KUMAR,
Former Secretary, Ministry of Mines

As far as I am concerned, I think, all that I had wanted to say has already been said. However, coming from the mines background, we face a lot of problems in getting land, and, I notice in the LA Act, 2013, there are stricter provisions for Schedule V and tribal areas. Compounded with LA is one issue, in mines scenario it has basically become purchase, because the road to acquisition is very difficult, but the forest and the environment issues also impinge on land and there is a whole plethora of

requirements for obtaining environment clearance and forest clearance. I have raised this issue even earlier, these processes are carried out in a sequence, like you have an SIA for LA, you have a hearing for environment and for forest land, I think, for the ease of doing business, these should be collapsed, so an entrepreneur doesn't have to keep going to various authorities and seeking multiple kinds of consent. At times, there is an element of blackmail, because of increasing awareness and literacy, people understand what is there for the project proponent, we should guard against this, otherwise, our progress would be hampered. Of course, you have to balance the public good versus the landowner or the right-holder who needs to be compensated. We have had a lot of discussion, now I would leave the floor open for observations, comments, and questions. We request you to be very specific, if possible, please indicate the panellist who you would like to respond to your questions.

Q&A Session

Dr Nirmala Buch: I have a few points, they are more of observations and comments about what is the reality. I was very disturbed when I heard Mr Suresh, because, I have been in Government for more than a quarter-of-a-century. Even I see have been objective about the policies of the government and they are not as bad as you say, so please don't generalize, say about Haryana. You have not seen other states, lots of work has been done, lot of computerization has taken place, Ministry of Road Development funded them, for instance, Karnataka and Madhya Pradesh, where, as a farmer, I can see my land records on the internet, that is the situation. I can see the map in Google, along with the records. The new



authorities will not solve problems, they will only create problems. Land records have been prepared, I don't say that they are hundred percent correct but a lot of work has been done. As a farmer I have a real Pustika, which the banks will accept as a document of ownership. I have khasra and khatauni, B1 and B2. Farmers know what they are, they don't have to learn Urdu or any other language, even women know what these documents are. So, let us not underestimate our farmers, let us not underestimate the work that has been done, lot of work has been done in land records, things are not as bad everywhere, I cannot guarantee they are good everywhere. I know Haryana has a very different system, for instance, when we did a review of the criminal justice system in Haryana, instead of FIR, *wo kehte hain, "kagaz aaya taar mein lagaya"* (they say, paper was received, it was placed in taar file) that means no FIR, *toh woh system baaki jagah nahi hota,* (that system is not prevalent at other places). Very simply, please don't generalize about all the states, things are not as bad, and we don't have to declare that so and so is the owner, the document show who is the owner.

Secondly, and this is about the SIA, that sharecroppers *bhaag jatey hain, woh bhaag nahin jatey hain unka record hota hai,* (run away, they don't run away, their records are maintained). Some states have enacted land leasing law based on the suggestions of NITI Aayog, for instance, Madhya Pradesh is one state which has done it. Earlier, there were informal leases everywhere, which were honoured by all the parties. Now, a law has been passed whereby you can enter into a written agreement for five years. The documents carry all the details etc. I suppose other states will also probably frame the law.

Then, there is the point that people should be involved, I think, if systematic work has been done, pre-SIA, before the project comes, a lot of details are collected. It will help a lot. Basically I wanted to clarify this, I was very upset when you said that throughout the country things are bad, they are not as bad everywhere. Thank You

Dr D Suresh: First, let me accept the scenario as described by ma'am. A lot of good work has been done, a lot of good work has been done in Haryana, as well. It is not that Haryana is not technology savvy, a lot of good work has been done and we are moving forward. But the problem is

that we are hyper-sensitive to criticism in the government, this is a major problem. I think, accepting criticism is a good thing, it is a way of looking at things in a productive manner, a lot of good work happens in government. But let us also understand that a lot of problems are on account of government functioning, I say that as a bureaucrat. I mean, ma'am has got more experience, much more than me, but, with 25 years of experience, I can say that a lot of problems arise because of the incomplete nature of projects.

You start a good work and you don't complete it, the common man does not get the benefit. You may have records available on net without digital signatures maybe, it is of no value, those records are not linked to the banks, not linked to the courts. My anxiety and criticism stems from the fact that we need to move forward fast, we can't have projects lingering for about three decades and we can't be patting ourselves on the back. To say that we are doing a good work, we need to complete it, end to end. The time has come for this country, time has come for governments to say, so and so is the owner. Do we need to wait 50 years to say who is the owner? I will recount one instance, in Gual Pahari, Gurugram, government officials were deciding the fate of Rs 3000 crore property, some in favour of private people, some in favour of government. This has created a mess, primarily because, even now, the civil courts have to look at fifty-year old records to determine the owner. This is what we need to address, nobody should look at fifty years of land records, that is why we need to have conclusive titling. The authority will examine the records for hundred years, fifty years and then say, so and so is the owner. Why should the common

man do it, it is the responsibility of the government. If we keep praising these existing systems, we will go nowhere. Let us remember that the objective of land records management was different when the Todarmal system of recordkeeping was introduced in northern India in the 16th century. It was land revenue, because, you know, land was so cheap, land was not giving income. Today, land is the most important component of investment, so, you need to certify who is the owner and that certification has to be done by government authorities, by the conclusive titling tribunals. Farmers will understand kasra, katauni, kevat, etc., why should only farmers, everybody should understand, common man should understand, somebody coming from abroad, FDI investor should understand. Why should the bighe, beeswa in different districts be different, what is *beegha* and *beeswa* in Gurugram will be different in *kanal*. Why don't you get into yards, metric system, centimeters, inches, what the common man can understand. This is what I am saying, governments have done good work, let us not be paranoid with criticism, let us not applaud ourselves continuously, let us be more open to new ways of thinking.

Dr Nirmala Buch: I was Secretary, Rural Development, 25 years ago. What I have said is the perception as a common citizen, as a common farmer. You said about bigha, beeswa, *beegha beeswa log bolte hain sarkari record mein hectare aur acre he hai, usme beegha biswa records mein nahi hota, decimal system has been accepted, toh wahi kai jagah mein farak hai,* (people say beeghe, biswa, but in government records it is hectare and acre, beeghe, biswa is not in records, the decimal system has been accepted, that may be different at some places). Let us not generalize, let us see what work has not been done. Let us face the fact that this work has been done, not by me, I was there in 1993, but speaking of 2018, *bahut jagah kaam hua hai logon ko malum hai kisse karna hai, kaise registration hota hai, registration ki kya value hai, uske upar se mutation hota hain, uske upar se, bank records hota hai, bank accept karta hai,* (work has been done at a lot of places, people know who has to work, how registration is done, what is the value of registration, beyond that is mutation, then there are bank records, bank accepts the documents). I just wanted to clarify.





Dr D Suresh: But we should ask the experience of a common man.

Dr Nirmala Buch: I am speaking as a common man.

Dr D Suresh: You are a Secretary, your documents would be registered, I think, on time.

Mr Arun Kumar: You see, ma'am, the point is that there are different levels of record keeping and we need to appreciate that. I come from the state of Assam, though I am being rather harsh on my parent state, our records are in a mess, compared to Karnataka. Just a small story, when I was the Revenue Secretary, for a short period of time, we had a concept called field mutation, which is a quick process. Unfortunately, the system had gone into disuse in our state, I insisted that we should have field mutations, we did a few lakhs and I was very proud of it. Then I told my counterpart in Karnataka about what we had done. And he said, "we don't need it", I asked, "why" and he said, "everything is up-to-date". The limited point is, there are a lot of variations and a lot of work

remains to be done in various states, we continuously need to improve systems. Many of our states have very outdated revenue courts and they need to certainly step up and clear the web which has been created. You have a law then you have a circular, then you have another circular, no one consolidates and brings out a clean bit of legislation, just because it is a lot of hard-work.

Dr Abhijit Guha: My question is not directed to any one of you, this is for record at TERI, because TERI wants to pick up threads of discussion from here, and send it to the government, as far as my understanding goes about the conference. My point is that a new law requires a new attitude. And the way forward doesn't mean that you amend the Act continuously, you also need to have a kind of research back up for this kind of Act. Let me give a very concrete example, we talk about compensation, we talk about enhancement of compensation, but do we really know what the land losers do with the compensation? How do they utilize the compensation money? The government, virtually, has no database

on the utilization of compensation money. I have done some anthropological research and I have found that after getting huge amount of compensation people just spend it. I have some field experience in Gurugram, one man told me that he bought a Pajero car for his son-in-law, after getting the compensation.

The point is, if you look at the utilization of compensation money, interesting information comes up. For instance, in Odisha, data from Ringali dam has shown that, after receiving compensation money, the age of marriage of daughters in a region has declined. This is because they had to pay large dowry after getting the compensation. In my research I have found that most of the compensation money is utilized by the farmers for simple domestic consumption. A lot of research has to be done, the government has to keep track, it is not enough to give compensation. The Walter Foundation has found, again, in Odisha that people were smoking cigarettes with hundred rupee note of the compensation money. So, utilization of compensation money should be researched and there should be provisions, either, in the Manuals or in the Rules, as part of this Law, about how the compensation money has to be utilized. It is not enough that we have given such an amount as the compensation.

Secondly, I have seen through my field visits that the Archaeological Department has acquired hundreds, sometimes, thousands of acres of land, and much of this land is common property resources. This Law should have a provision that looks at what the Archaeological Department is doing with huge amounts of land already acquired. In Khajuraho, you will see that hundreds of acres of lands have been acquired and people are debarred

from entering those sites. But they are not being utilized by the Archaeological Department, so, for how many years will it occupy common property resources and say that it will be utilized sometime.

Thirdly, Mr Jairam Ramesh had just said that the new Law not only specifies the amount of land to be acquired, but also the kind of land which can be acquired for a project. I have studied the Gazette Notification, you only learn that such amounts of land have to be acquired but it does not say anything about the quality of that land, was it a mono-crop land, was it a common property resource. My query is, I don't know if anyone in this House would like to enlighten me, has any Gazette Notification mentioned the nature of land that is being acquired. Thank you.

Person 3: I want to take the discussion to SIA which was the core topic for this session. Because of problems with revenue records, social impact assessment is required. Nobody can deny that there are complex issues with land records. So, SIA was thought of resolving these issues for the project. My question is why are states not going for SIA, what are the reasons, one, do we have the capacity to do SIA, whether SIA is required for each and every project? We need to discuss along these lines so that this session can bring some results. Why are state government doing away with SIAs, why don't they want SIA, why proponent don't want SIA?

Mr Arun Kumar: I think Dr Samanta would like to respond. As far as I can understand, the moment you have an SIA, you create a body which, sometimes, has an interest contrary to the acquisition. I am not saying whether the interest is legitimate or illegitimate and, to that extent, sometimes it becomes more difficult to counter such a body. If we had SIA, let us say, for Narmada or Sardar Sarovar, there would have been much more organized and strong opposition. Those laws were harsh, perhaps, that is the reason why governments would try and do away with SIAs. The other point is, as I said, the need to have a balance between the requirement of the project and the interest of the people there. Overall, we are a democracy. I think SIA is a good process, if it leads to identification of people who are the landholders, stakeholders, we would need to face it fairly, squarely and transparently. If it is in national interest, State must have





the right to over-rule those objections, but over-ruling should always be a last resort.

Dr Debabrata Samanta: Just to add one point, the problem is with the Act itself, you do SIA at Section-4, and cut-off date for land value is Section-11, which is 1 year, and during this time a lot of transactions are taking place, a lot of affected families are created. That is the core issue why state governments are opposing SIA, because each affected family is entitled to R&R. So, in one project, from 20 household it is becoming 200. The cost of land acquisition is coming out to be Rs 5 crore–6 crore, per hectare, which is very costly, it is coming out to be 32%–33% of the project cost. This is one of the core issue that needs to be addressed immediately, if we want to do SIA and resolve the issue of tenancies, otherwise, we will continue discussing this for another 20 years.

Mr Arun Kumar: Very well said. As I said, we need to create balance, if you look at the 1894 Act, it was a very unbalanced Act. As Mr Jairam Ramesh said, all the political parties agreed to make a new law. Now the pendulum has swung to the other extreme. Perhaps, we have an Act today that is too liberal. We need to come back to the middle. But, we would need to have much more study and material to take a call.

Dr D Suresh: We also need to enhance the capacity for doing SIA.

Mr Arun Kumar: Yes, yes, capacity is very important.

Dr D Suresh: I would also like to say that there is a lot of scope and, maybe, a lot of work for non-governmental organization in SIA, who are trained and very focused in this kind of work, apart from government.

Mr Arun Kumar: Capacity is very important because I was looking at some figures on acquisition, post 2013, and surprisingly, UP and Punjab have done a much better job, whereas, it is experienced in central government, by and large, that the southern and the western states do a better job of implementation. The reason is that they have created capacity, but this information is anecdotal, that is why we need documentation. Dr Samanta from Bihar was also lamenting about capacity, so when you have a law which requires a lot of consultation, a lot of analysis in the public domain, you need capacity to be able to meet the demands of the law, which, we, unfortunately, lack. In India we are good in theory but poor in implementation.

Dr Malvika Pal, Associate Professor of Law and Legal Studies, Ambedkar University, Delhi: My question is to Dr. Suresh. I am very happy that you raised a very important aspect regarding the valuation committee, and my question is directed to that. I have been working on court cases on LA, particularly, because I have an economics background. I work on valuation and we have seen that the method of valuation regarding compensation changes from the trial court to the high court to the Supreme Court. They are using different methods to give different kind of valuation. Therefore, your statement that there is a collector rate and there is a market rate, that is very relevant. Essentially, the entire debate on this 2013 Act is also regarding the enhancement of compensation and, if you look at the number of cases under litigation, the issue is compensation. So, if the valuation of land is the most important issue, why is it that the government has not addressed it. Of course, the suggestion for an evaluation committee is very well taken, of course, it needs to be done. But I wonder if it is a strategic thing on part of the government to create an uncertainty so that rent-seeking

is enhanced by the process. There are many stakeholders, you know, they would like to utilize the uncertainties involved in it, so, are there existing reports that we don't know about, or is it a plan of the government to clarify this, even before the evaluation committee, because that would take a long time? Thank you.

Dr D Suresh: I agree with most of your observation, and I don't want to sound like the critic of the government. It is not deliberate, it is a combination of lack of capacity and non-availability of true values in the real estate and land related transactions. As far as the government is concerned, the official rate is the collector rate, and every year the district collector declares the collector rate for different tehsils and different areas within the city, within the villages. That exercise is done annually, with the help of tehsildars and patwaris. The question is whether that is the market rate? In some cases, yes, in most cases, it is not. Therefore, when it comes to compensation, when government wants to compensate the farmers, they will never accept the collector rate, they will say that the market rate is much more.

Then, what happens is that the government constitutes various standing committees, one of the standing committees in my Division, I am the chairman of that, we take into consideration the market rate, the market information and registered value of particular properties over a period of time. We come to some kind of, so called market rate, which is different from the official collector rate. All this is done in a manner, which, according to me, is not scientific. We need to improve and we need to say either that everything that is going on is fine or we need to recommend or move towards what should be done. In that context I said that we need to pass the Land Titling



Bill. There is a provision for land valuation, which has to be done in a scientific manner and that needs to be frozen. The titling authority is provided with a lot of support system, from the market or consortium, to determine the market rate that is in the public domain and is available to people. This leaves no room for people to go to courts and to agitate and to sit on dharna, etc. In that context I have been a little critical, my intention is not to criticize what has already been achieved in the government, including Haryana. Sometimes, we need to look at things critically, otherwise, we will not be able to move towards the solution. I hope I have answered your question.

Mr Arun Kumar: Just to respond to your question, the government notifies the circle rate, ok, that serves as the base rate and then leaves it to the wisdom of the committee to consider the market rate. Whether it can be very scientific, is a big question mark, because if you go to Gurgaon, within the same 1 square km area, if you are adjacent to a 60 metre road, land rate is different, if you are adjacent to a hundred metre road, the rate is different, if you are in an office block, the rate is different. Therefore, some amount of discretion, not discretion really, an application of mind will have to be made, because, if you look at a scenario where the government notifies the rate of every square km of land, that exercise will become gigantic. So, the circle rate is the base rate, after that, it is the revenue intelligence, market intelligence that comes before the committee and then they decide the rate, which is a fair rate. My experience has always been that the government is always understaffed, amongst the people who are not from the government, this would be sacrilegious. Understaffed in crucial positions, you may be having, let us say, ten thousand people, maintaining a road length but when you want one Tehsildar for rate fixation you will not get him. Basically, it is the matter of capacity with the government, and the government needs to right size itself.

Dr D Suresh: Sir, let us say now there are different rates, closer to the road behind, front etc., in addition to the subjectivity, the rate at which the purchaser is purchasing a land is depending on the rate at which the seller wants to sell. Now, if it is valued and that is in the public domain, the subjectivity of the authority would be reduced and the subjectivity of the seller or the prerogative of the

seller to sell at a particular rate would also come down. The rates would be available for people to see, for people to know. From that point of view, valuation is a very important thing, besides, the government is actually losing a lot of revenue on stamp duty. The market rate maybe, say Rs 100, and the collector rate may be, say Rs 50, so government is losing stamp duty on that Rs 50.

Dr K Ratnabali, Assistant Professor, Faculty of Law, Delhi University: My observation is directed to Dr Samanta. When we talk about the SIA, we are generally focusing on the social and the economic aspect of the lives of people who are affected or are going to be affected, many a times, we find that displacement is done in tribal areas, particularly, vulnerable tribal group. For them, land has much more than social and economic significance, land is, in fact, a cultural and religious base for tribals also, so the sacred places, and the culturally important places that are in those land, many a time we ignore that, when we do assessment of the land which is to be acquired. That leads to a lot of rebellion from that community and you had also mentioned that if you try to change the design later on, it leads to cost-over-run, it is risky. My suggestion is, just as we do land survey, can't we map these sacred and religious places of the tribals, so we know beforehand where it is situated, so that it can be taken into account whenever a design is made.

Dr Debrabata Samanta: Should I respond? When we conduct some SIA, definitely we take into account whether there are any temples or religious places. Ma'am, what you suggested that is my suggestion also. We need to consult the community much before the designing of project, so that all the issues which create conflict can be mitigated beforehand.

Dr Ratnabali: Generally, we try to look for man-made structures, rather than the naturally occurring, sacred spaces, it may be a grove, it may be a boulder, may be a river, anything.

Dr Debrabata Samanta: I have not come across them because Bihar has very less tribal population left now. Whatever I have shared, is my field experiences here.

Dr Ratnabali: Particularly, I would like to make this observation in the context of Vedanta case where the Dongria-Kond tribe had claimed that the Niyamgiri hill,



where the bauxite mining had to be done, is their God. The Supreme Court had also given a decision in their favour, regarding the protection of their cultural rights.

Mr Arun Kumar: On mapping, if you do that exercise for the country as a whole, it will become a humungous exercise. Also, beliefs change, so, I think, we would have to go project wise.

Dr Ratnabali: If we can just focus on the primitive tribal groups only.

Mr Arun Kumar: If there is no requirement there is no point.

Mr Madhusudhan: As a practitioner, I work on social assessment and land acquisition issues in the context of this Act. Till today, we are struggling to get revenue maps from the patwaris, it's a hell of a job. It does not take less than ten days to get one map of a village. And, if I have a 100km road, imagine the time taken, this is one major issue which is not being addressed, we are struggling across country. I have worked in all states of India, everywhere we have the same problem, very few can give me something but it is not complete. The second issue is capacity building. We are not getting people to do SIA, I can have an NGO, I can have an academic institution but they don't have an understanding of the ground level, community level issues, how to mobilize, they don't understand the requirements of the Act at all. We need to have some process where we can have capacity building across the country. Even the National Institute of Rural Development, Hyderabad tried to do this for all the Commissioners, the SDMS and SDOs, across the country, but the response has been lack lustre. They don't come

for the training program, the Principle Secretary has to give the order for them to come and attend. So, these are the problems we are facing on the ground.

Then, like Dr. Samanta said about the design, the design activity should not start before the social impact or the environmental issues are considered, because, then you will know where you have to actually put your project. When the project is already designed we have problems in changing the design because of the financial issues. So, this should be looked at as a primary activity even before getting into the economics of it.

Mr Aiban Swer, Meghalaya Institute of Governance :

Good afternoon sir. My Institute has been conducting SIA in Meghalaya since the last few years. I want to draw your attention towards the statement made by Jairam Ramesh. He said that we should look at who is impacted by LA, the first order, second order losers and compensation should be provided to livelihood losers at same rate as landowners. I wish to bring your attention to a situation where, we have done SIA on an area, which is bordering between Assam, Meghalaya, and Bangladesh, it's a border area, for entry and exit- facilitation centre. Now, while the landowners are Garo tribals, the others are people who have migrated either from Bangladesh or from Assam, because, it is next to the river Brahmaputra. Whenever the river goes down, they will go down, whenever the river comes up, they will climb up to these hills and live there. When we conducted the SIA for this area, most of the people who were squatters, were not willing to come to the public hearing, they were not willing to answer the questions because they felt they were not the owners, they were just people who migrated within



the border areas. But, during the survey we found that quite a number of families were residents of this area, now, during the public hearing, the real owners, who are the Nyokhamas would not consider them to be eligible for any form of compensation, since they were only squatters. This is in contrast to what the honourable MP, panel members said that landless people should also be provided compensation at the same rate as landowners. Please clarify this.

Dr D Suresh: On this point I don't agree with you, that every encroacher needs to be compensated as though he is an owner, I think, that wouldn't be the right thing to do. In Haryana we have seen a number of cases where people have encroached on government land, they are not very poor people, rich people have encroached, so I think the anxiety of the Minister was that very often the authorities tend to undermine the position of, let us say a very poor encroacher who is living there as a squatter, for fifty years. He is staying there for a very long time because he is poor, he has no alternative space, those squatters need to be looked at with a more sensitive angle, maybe, the government has a responsibility to look at them in a different way, in view of Supreme Court judgments etc., that you need to compensate them, you need to rehabilitate them. From that point of view, those squatters and those encroachers need to be differentiated from unscrupulous elements who are encroaching on government land, you don't need to be there, but you are there, for real estate purposes and all. Very often it happens in Faridabad and Gurgaon.

Dr Samir Rai, Social Development Specialist: My question is for Dr. Samanta, as you are heading one of the state SIA units. Ma'am had a question about the sacred groves and cultural thought process, belief systems of the tribals. Specifically, do you, in your SIA, cover the man-nature relationship because that is a very important thing. Generally, in SIA, we tend to count the number of temples, mosques and structures, we never tend to take into account the man-nature relationship, have you taken it into consideration somewhere, it's not specific to the tribals, it is everywhere.

Dr Debrabata Samanta: Every parcel of land has definitely an emotional attachment, it is not only religious, that is

why we face so much resistance, even the compensation amount cannot compensate them. Coming to your point, we also feel that all these dimensions needs to be incorporated, need to be taken into account. We also need to understand, in your language, the man-nature relationship.

Dr Samir Rai: Sir, it is not my language, it is part of the field training for anthropologist, learning and use of the native language and understanding of the man-nature relationships, I mean even if you go to urban sector, *kiska aap land lete hain, kisi gaun mein, kisi seher mein, kisi mohaale mein, kahin specific ek jagah hoti hai jahan ki ek aadmi aapko falane dukan pe ya uss jageh pe hi milega, aap uss dukan ko tod dete hain, uss admi ki social standing khatam hojati hai, jab ki uski dukan nahi hai, he sits there, for four hours, gaun mein, neem ke ped ke chabutarey mein, ek dadaji roz miltey hain, agar woh neem ke ped ka chabutara toot jata hai toh dadaji, ki social standing khatam ho jati hai.* (When you take someone's land in some village, in some city, in some colony, there is some specific place where one person will be found, say, only at a particular shop, when you break that shop, the man loses his social standing, he sits there for four hours. In a village, an old man can always be met, on a sit-out near a neem tree, if the sit-out area is destroyed, the old man loses all his social standing).

Dr Debabrata Samanta: It is important to capture the perceived loss through the feedback and try to understand the losses that they may face if the land gets acquired.

Mr Asim Chaudhury: My question is for Mr Samanta. After the SDGs have come, post, Paris Conference and India is a signatory to it, most of the SIAs have to be linked to SDGs. Unfortunately, at many places it is not happening. Whether an audit or some kind of a study has been done to see whether SIA is matching with the SDGs? My submission is, in SIA study, you must first examine whether you are falling in the whole framework of SDGs. Next, in my experience of 20–30 years, I have seen that most of the states have large tracts of vacant land. I have experience in the oil sector and the highway sector. The life of oil wells is twenty years maximum, and after the oil well is abandoned the land lies vacant. When land is being requisitioned for 'x' purpose, it should, first, be set out from the land which is lying vacant. In most of the states, even, Gujarat, Maharashtra, large tracts are lying vacant, so, first, it should be distributed to the villagers, to the Gram Sabha, it can be utilized for multi-crop farming or mono-crop, second, comes the public purpose. Thank you very much.

Mr Arun Kumar: I think that's a good suggestion, SDGs could certainly form the minimum basic requirements. All the panellists have made fruitful contribution. Dr. Samanta highlighted the problems, Dr Suresh rightly pointed out the requirement for the updation of land records. I think we should remember it is a new Law. We must remember that it is a long journey from 1894 to 2013. We are in the process of learning, we need to document these experiences, so that we have a base for





KEYNOTE ADDRESS BY DR K P KRISHNAN, SECRETARY, MINISTRY OF SKILL DEVELOPMENT AND ENTREPRENEURSHIP, GOVERNMENT OF INDIA

I am happy to be here to talk on land issues in general and on LA matters, in particular. I must however start with a caveat, one, I formally dealt with this issue till Dec 2016, so, I maybe, somewhat, dated on some of the nuances and details. Two, I have not been able to familiarize myself with what has been said till now, perhaps some part of what I say may have been covered, maybe repetitive. But, I plan to situate the LA question and the Act and the Ordinances and the Executive Order that followed it in a much larger context of land issues in India and land markets in particular.

discussion and to improve on the existing legislation. Thank you very much for all your co-operation, we will be proceeding for lunch.

Joyita Ghose: I would like to thank all the speakers and Mr Arun Kumar also, for moderating the session so well, and the members of the audience for sharing their perspectives with us.

Day 2, Session IV, 'Rehabilitation of PAFs: Experience of Livelihood Restoration'

Joyita Ghose: Welcome back to the concluding session of the two day national conference. The topic of this session is the rehabilitation of Project-Affected-Families, the experience of livelihood restoration. The key note address for this session will be delivered by Dr. K.P Krishnan, currently the Secretary in the Ministry of Skill Development and Entrepreneurship. Previously, he has held key decision making position in the Ministry of Rural Development, soon after the enactment of the 2013 LA Act. I now request Sir, to please deliver the keynote address.

Now, let me start with the macro-picture of land in India, again, perhaps something a lot of you are very familiar with. In terms of the broad numbers, India has close to three- thirty million hectares, of which, roughly 50% is inhospitable. So, effectively, half of what India has, is not easily usable and, of the land that is available for use, the last formal data on this subject indicates that agriculture accounts for 152 million hectares, which is just a little less than 50%, close to 46%-47% of India's land resources. We need to keep in mind that this 46% of land resources produces, approximately, 14%-16% of India's GDP. So, if you are talking about land efficiency we need to keep this in mind. Likewise, the numbers on industry and urban, and these are approximate because these haven't been computed very scientifically by the statistical organizations, but the best estimates of the experts say that approximately one per cent is industry use, could be between 1 and 1.5 and about 2% to 4% are for urban use. Collectively, these contribute two-thirds of India's GDP, 68% of India's GDP. Likewise, 1 hectare of agricultural land, in terms of employment, supports five and a half persons, on an average, and the other two sectors and, again these are broad averages, I have a purpose in making these points, the industrial and urban



sector supports a little over 32 people. This macro-picture needs to be kept in mind as a background to whatever we are discussing. India will continue to need a lot more land for industries and for urban growth. Can all of these come only from non-fertile or non-agricultural land? The macro answer is no, it cannot, it needs to come from what is currently classified, as land under agricultural use.

And, if the entire population of India were to be housed in urban areas only, just a hypothetical exercise, and, if, everyone in India was to work in industry or services sector, the secondary or tertiary sector, the incremental land requirement for this completely crazy but seismic shift would be 25 million hectares. So, in the macro-picture, if all of India were to become urban, if all of India were to be employed only in industry and services, we require 25 million hectares more, approximately, 16-17% of the land presently under agricultural use. Even with this sort of seismic shift, can we produce enough food on our lands to feed all of us, the answer is a resounding yes, and this is not even based on an estimates of a huge increase in productivity. The FAO says, on an average, the yield of rice in India can increase by 88% and in the case of wheat, 56% to be exact. This is still the potential that India needs to harness. Given that India witnessed a six fold increase in the wheat yield from 1950–2013, the kind of FAO projected-growth rate in rice and wheat yield are well within the realm of imagination. The reason for taking an audience, which need not be bothered with all this data, is to make the simple point that, for a large number of Indians to prosper, and for a distribution of prosperity, land presently used for agriculture needs to be diverted and made available for industry and urbanization. This is at a macro-level, a conclusion which is inescapable, and even an economists like Amartya Sen, and one would expect a contrary view, given what is typically ascribed to Amartya Sen, has said that prohibiting the use of

agricultural land for industries is clearly self-defeating. The question that needs to be dealt with is, how does one handle the consequences of this huge shift of land use, and, what will often turn out to be, involuntary LA. I have given you a macro picture where the case for much larger use of agricultural land in industry and urban sector is a near compulsion. At the micro level, this is a very sobering picture, on the per capita basis. India was land scarce, relative to a majority of countries as far back as 1960, and there is a very interesting UNDP graph, typically in all their reports, which shows a straight line drawn at 45 degree, showing land density per people and, by 2050, the expectation is that the land per population ratio will decline four-fold. As it is, India is a very land scarce country in terms of per capita land, and, at that point in time, other than Bangladesh, Mauritius and Netherlands, there will be no other country which, on a per capita basis, has less land than India.

In fact, the comparisons that we always make with China which, I think would be meaningless, by 2050, China will have four times land per capita more than India, Brazil, another country with which we often compare ourselves, will have twenty times more land per capita, so and this problem, if you were to classify this as a problem, will only get aggravated with a growing India. So, I think the whole LA exercise, if I were to pose it as a problem in economics, is a challenge that the public policy needs to address. Clearly, the macro-picture tells us that large scale shift of land use which would eventually mean a shift of ownership is a necessity, versus, a situation where at a per capita level, a land scarce country will become even more land scarce as we go along.

Constitutionally, land is entirely a state subject, pure land, land records, etc., whereas acquisition and requisitioning of property is Entry number 42 in the Concurrent List, and there are clear provisions in the Constitution in terms of

what happens when a law is made by the Union on a subject in the Concurrent List and there are either existing laws on the subject in a state or, later, a law is passed by a state. The general provision is the Union Law ordinarily prevails, unless the state law, in case of a repugnancy with the Central Law, is specifically assented to by the President of India, which is the formal way of stating that the Union Home Ministry needs to give assent to the repugnant legislation. One serious constraint of all the factors of production in India, clearly, if you look at the standard four-fold - land, labour, capital, entrepreneurship, land is clearly one of the binding factors, and my broad sense is, in the case of capital, we have a reasonably functioning market in India, which, at the margin may misallocate but, on an average, the market for capital seems to be working well. The market for labour is a very regulated market and it is constrained by a lot of legislations. But at least at the higher levels of compensation, levels that are not controlled based on wage-levels, there is a reasonably well functioning labour market, numerically small, significant in terms of the value of the market. In the case of land, clearly there is a serious question mark on whether we have a well- functioning liquid set of land markets because, if there were to be a set of well-functioning land markets, a lot of the pain of LA would be taken away by the market. Because, in the market a lot of these transactions would be voluntary, and, given the levels of literacy, you may question on whether these are all necessarily very well informed, but a well- functioning market will have incentive for the owners of the land to figure out the ways in which the market can function in a reasonably liquid way. Now the absence of market is a point that we need to keep in mind. Why is there such a disproportionate public policy attention to the question of involuntary LA? If you look at countries at our stages of development, you don't see this kind of an emphasis, on a law backed involuntary forced acquisition of land, because, in most of these countries, for a variety of reasons, the land market seems to be functioning much better than the Indian land market.

One more set of statistical data on the importance of land, thereafter, I will come to current issues in land acquisition. The 70th round of NSSO, the National Sample Survey Organization, which looked at key indicators of



debts and investments in India, found in rural areas, in 2013, that land and building constitutes 73% and 21% respectively, of the total value of assets. Around 73% of assets of rural India, declared in the NSSO survey, is land, there are corresponding figure in urban areas which, surprisingly are higher. Thus, close to three-fourth of the wealth of Indians appears to be in land, and there are reports by the National Bank for Agriculture and Rural Development (NABARD) and the Reserve Bank of India (RBI) which make the same point.

Now, let me come straightaway to the LA issue, the legislative history, the old Act, the Resettlement and Rehabilitation Policy which preceded it, and the culmination in the form of an Act, which was initially attempted in the 2007–2008 period, getting legislated in 2013–2014 is something you are familiar with. I want to draw your attention to a couple of generic points behind this whole exercise. The entire Act is focused on acquisition of land not for government but for non-government entities. If you have seen the entire debate on the ordinance, the fall out of the ordinance, the entire attention of the Act and the commentary has been on the clause for acquiring land, formally for public purpose, but where the end user is not government. Let us say, a power project, which in the olden days would have been put up by an Electricity Board, but in today's India, is put up by a private sector company with whom the Government has a power purchase agreement. It is uses like this which are the key area of attention of this legislation, paradoxically, if you see the history of LA and look at where the delays have been and what were the kind of problems, almost 96% of LA under the old Act was by the government for the government. It was not by the government for

private sector, there were, in the mid-2004-05, some very egregious but very public examples of two or three acquisition for private sector entities, which got a disproportionate amount of attention. Historically, if you look at the data, close to 96% and, Sanjoy Chakrovarty, in his book on land (*The Price of Land – Acquisition, Conflict and Consequence, 2013*) details it much more, close to 95%–96 % of the acquisition, under the old Act, was by the government for the government. What has been the track record of the government in dealing with this acquisition, I don't need to tell you. I think, we all know the track record has, on an average, been absolutely horrendous. In his book, Chakrovarty takes the Hirakud dam related acquisition, and gives five or six case studies, wherein, in the case of over hundred families, lands were acquired six times. You acquire a piece of land 'x', on the ground that you are building a dam, in the early fifties, you had a land for land policy, you gave them land here, you resettled them here, exactly five years later you come back and acquire this piece of land, which you, as a State have given, Chakrovarty goes on to give example after example of land acquisition of this nature by government. If you go back into history and look at the data, bulk of the tragic cases were in the large scale irrigation and power projects. The reason I am mentioning this is, if there is one thing that jumps out of our experience of old land Acquisition exercise, it is that the government generally has done a terrible job of looking after the rights of the people whose lands were acquired and dealing with the whole business of R&R, taking 8 years, 12 years, on an average, to pay compensation. And, having given compensation 8 years later, there was endless litigation on whether interest will be paid or not. So, the history of LA in India is actually a history of State failure, which this Act is trying to address, in my opinion. If you recall, Pratap Bhanu Mehta wrote very eloquently about this in 2014-15, when he said that we collectively know that the biggest problem of the old LA exercise was inadequate State capacity or plain and simple venality. And what do we do in the new Act? We actually increase the role of the State enormously, I don't know what is the proportion of people here who are working in government who have dealt with LA, who have dealt with tehsildars, who have dealt with revenue inspectors. Expecting that hierarchy to discharge the kind of responsibilities that have been



now imposed on them under the 2013 Act is, honestly, a bit of a joke. The intentions are extremely honourable. Will anyone in a civilized country dispute the fact that, before we deprive somebody of his or her right to property, he should do a simple cost benefit analysis and this Act, if you strip it of all its language, all that it says is that, before you embark on the business of depriving somebody of his or her right to property and, not merely property and livelihood, but all of the emotional, cultural, other kinds of associations with land, please carry out, a social cost benefit exercise. Ask, "can you do this project without acquiring land at all, if you can't, if you need to acquire, is this necessarily the best land to acquire", keeping in mind all of the factors that are plain and simple common sense reduced to a legislation.

And, if you come to the conclusion that there is no alternative, then please document it and if this is the only option available to you, then make sure that the compensation is generous. Our earlier attempts at making compensation market-related simply didn't work, because there is no market for land and the market that we create using the sale register, statistics, again, those of us who have administered this Act, know that a bulk of it is plain and simple fiction. A lot of it can be twisted, depending on the conclusions that you want to arrive at, so, this Act comes up with a slightly better way of fixing the compensation, keeping in mind the true scarcity value of land and ensuring that a person deprived of land has sufficient resources to re-construct his or her livelihood. It has put in place a whole series of procedural safeguards, there are clear roles for the local self-government, in the case of North-East, a different

set of committees, so this is the broad framework of the 2013 Act. In terms of the basic substance, it's an Act that, I personally think, is in the right direction.

The Ordinances that were promulgated in 2014, first one on 31.12.2014, re-issued with very minor modifications on 3.4.2015 and a third one on 30.05.2015, essentially tinkered with the definitions, and one or two procedural points, and with that I will conclude. Private hospitals, private educational institutions were explicitly brought under 'public purpose' by the Ordinance, this was not in the original Act, substitution of the word 'private entity' for 'private company', this made sense because, very often you could have acquisitions by a body like a Society constituted under the Society's Act, so, as a legal entity this was more a drafting suggestion from the Law Ministry and a new Section called 10 (A) where the right of consent of the person losing land was explicitly taken away. The more insidious provisions, in my opinion, were the powers given to the 'appropriate government' to exempt projects from the SIA, now, the SIA was essentially a decision making tool, it helped the acquiring body to come to a conclusion, based on an assessment of pros and cons. Doing away with this, I don't think, was a very sensible idea, but that is the wisdom of the Government. There was a specific provision to address the problems in Section 24 and Section 24(a) on how to calculate the period, excluding the period under stay and injunction, and return of unutilized land and some changes in the Fourth schedule which, again, were primarily of a drafting nature, because this was a mistake that had to be corrected, in the views of the Law Ministry, and there was a clause related to removal of difficulties, which is again a legislative clause.

The Ordinances, I am sure many of you are aware, were referred to a Joint Select Committee of both Houses which, I don't think, has made progress. The Select Committee has been formally continued, I am not sure of the solution. Formally, the Ordinances have expired but the Select Committee is still seized of the amendments. The 2015 Removal of Difficulties Order essentially looked at the compensation clause and addressed one problem, by addressing it in an executive manner, by the Removal of Difficulties Order. That, in short, is the history of the changes that have been made. What are my major



remarks on what we need to do, going forward? I am happy to see my colleague from NSDC, perhaps, he is here to talk about the skill development, resettlement, rehabilitation of the oustees, the land losers. I think, what is more important is the capacity building of the state machinery to administer this Act, in new area like this, we need to do serious capacity building and training in the government, state governments, district level functionaries and creating a lot of capacity and institutions to do SIA. Another serious issue that we need to address, which is in a sense mentioned in the Act, but not much work has been done, is the exercise of updating the land records, half of the problems of a non-existent land market, will actually get resolved if we were to do what many of us in the administrative services were recruited for, which is simple land administration, up keep of land records, keep the survey in tune with the land record, and ensure that there is a three-way convergence of registration, land revenue administration and survey and settlement. Capacity building of the state machinery, creation of greater institutional capacity for SIA, and updating and making land records much more contemporary and relevant are three or four suggestions that I have for going forward. I will conclude here, in case there are comments, questions, I will be happy to respond.

Q&A Session

Person 1: Sir, when this Act was made effective from 1.1.2014, I feel the states were not ready to administer or implement it. What do you say about this, because many states have not even made the Rules, even after a couple of years?

Dr K P Krishnan: It's a perfectly correct statement. All I want to say is that this is not the first and only time that the Indian Government does this, we seem to do this in matter after matter, we go into GST, go for constitutional amendment, start worrying about a software that is not working, then we start worrying about a Rule that is not written, we don't seem to invest sufficiently in advance for such major policy changes. This Act is, fundamentally, a different way of working than the previous Act. The first draft was written in 2005, we had, between 2005 and 2014, 9-10 years, during which we could have built up capacity. You are right, we didn't write the Rules, half the people who are administering the Act are finding their way by experimenting, I have no disagreement with your view.

Person 1: Sir, my second question is, as per this LARR 2013, studies show that acquisition takes place in not less than 18 months and may go up to 40-42 month. For a developing country like us where projects are required, of course, a balance has to be made, don't you think that this timeline delay projects, if the land acquisition itself takes two to three years.

Dr K P Krishnan: If the particular development project is so important, why is there no ability to obtain the consent of the landowners? Let me give you the example, some of you will be familiar with the 2006-'08 Ahmedabad Urban Development Authority experiment. The AUDA system of acquiring land is a very well functioning, extremely equitable and a very quick method. Let us say, I require half an acre of land to build an overhead water tank, it needs to be in the locality, geography says, it has to be located at the highest point. In this room, let us say, each of us is an occupant of a small part of land here, that unfortunate guy whom God made, the occupant of the highest point of land, why should he pay a price for the development of all of us? So, AUDA came up with a very simple plan. Say, you require half-an-acre, there are 25 households here, half acre proportionately divided over the land holding of every household, so I lose 220 square feet, she loses 35 square feet, a new plot is carved out which this person would have got if he had contributed his share. They got the plot and LA was completed, the tower was built, water started flowing, all within six months. So, there are methods to obtain consent. There was consent because



the entire locality felt the need that the overhead tank was a solution to the water supply problem of all of us. If there is consent, will not the community, with the help of the public policy machinery, find an answer?

Between 2006-10, the bulk of water supply, electricity in many colonies in Ahmedabad came up through this method and there are variants of this in Hyderabad. We have tried variants of this in Karnataka, there are various methods by which this has worked. My generic answer to your question is, there is no other way you can do this, except by SIA. SIA is a simple cost-benefit analysis, which, I think, is the minimum required before you deprive somebody of their right to property. I think it is difficult to crunch the timelines, some crunching may be possible at the margin, but the answer is consent, purchase.

Person 1: But, sir, the kind of land records we have in India, for obtaining consenting for a big project, if the survey of any plot number is missed, the total project is jeopardised.

Dr K P Krishnan: Unfortunately, there is no short cut to good governance, if land records are not well maintained, remember, why were governments created in the first place, to protect the life, limb and property. If we can't get the records matched with registration and survey, I think, we should just go back to basics and do that well.

Mr Rishi Mendiratta: Thank you very much for making such crucial and critical points about LA. I want to make a point about agriculture and you could clarify. You said that the land capital will get reduced and further aggravated with the acquisition of land. On the other hand, you also said that the agriculture land should be

given up and you had some statistics to back up your point. However, I feel that instead of encouraging the diversion of agriculture land, it should not be given up, even though land is required for industry. Our agriculture production has been declining, the contribution of agriculture to the GDP has been going downhill. Now, if we promote agriculture, it will solve a lot of problems.

Dr K P Krishnan: I said land currently under agricultural use is not necessarily being very well utilized, a lot of Indian agricultural land is actually very marginal, it is perhaps not very well-suited for agriculture. I am not the best guy to speak about this, because, I don't know enough about agriculture, but the macro-point is inescapable, that the proportion of land under agricultural use has to decline, that does not mean agriculture is declining. Agricultural productivity going up has nothing to do with decline in the quantum of land under agriculture. So, I have no disagreement with all of what you said, namely, focus on agriculture. You can become an agricultural leader, no quarrel, but you have to be a competitive agricultural exporting country, but that's a complex field. You look at world history, there is not even one exception to this rule, namely, with development, the proportion of agriculture in the GDP declines precipitously, not because agriculture is unimportant, but agricultural productivity goes up so much that a very small proportion of people and agriculture is actually able to feed the entire nation. It frees up both land and labour for being deployed in industry and services, that is the macro point I am making. But, you can always point out the example of the most fertile Basmati land, being taken to build a factory.

Mr Rishi Mendiratta: Absolutely sir.

Dr K P Krishnan: I make the point at the macro level. But there is also the micro picture. Using the best land suited for Basmati to build a hotel is the case of perverse application.

Mr Rishi Mendiratta: Sir, it is happening and it is getting rampant now. Probably we will have to curb it now.

Dr K P Krishnan: I can't disagree.

Dr Abhijit Guha: I would like to know more of your experiences, as Secretary in the Ministry of Skill Development, how this new Law is trying to develop

the skills of the displaced persons. How is the new Law helping your Ministry to develop the skills of displaced persons? Are there any plans, because skill development is one of the most important thing in rehabilitation?

Dr KP Krishnan: Yes, I think Payaal will be talking about our schemes, I personally do not know the details. I suspect a lot of the specific skill development components will be absolutely at the field level, so, land acquisition has taken place, people have been ousted here, what kinds of skills are needs to be developed in this area, what is the local market, where is the shortage of skilled labour, these responses are likely to be entirely local. So, it's an important component but I am not in the position to make a general comment. I think there are similar examples in the mining areas, as I recollect, Orissa is using the District Mineral Development Fund for rehabilitation, I believe there has been a fair amount of skilling, but all done locally. But I don't know the details.

Joyita Ghose: Thank you very much, sir, for providing an overview of the broader context within which land resources are managed in the country and placing the provisions of LA Act within this broader context. I would now like to request Dr. Ghosh to present a token of our appreciation to sir, for joining us today. We will now continue with the next panel discussion on R&R of PAFs and the experience of livelihood restoration. The session will be chaired by Dr Prodipto Ghosh, who is currently a Distinguished Fellow at TERI, and, was formerly the Secretary, Ministry of Environment, Forest and Climate Change. The panelists for this session include, Mr Anirudh Kumar, who is currently Joint Secretary, Ministry of Power, Mr Mahendra Payaal, who is the head of PMKVY (RPL &



Special Projects) at NSDC, Mr Pranay Kumar who is the Managing Director of Consultants for Rural Area Linked Economy and Dr Parthapriya Ghosh who is a Senior Social Development Specialist at the World Bank. I invite all the speakers to please join us at the dais.

Joyita Ghose: I request Dr Ghosh to please begin the session.

Dr Ghosh: This final session is a panel discussion on rehabilitation of Project-Affected-People and, in particular, of the experience of the livelihood restoration. Of course, this is a very key element of, I would not like to use the long acronym, I would prefer to call it the Jairam Ramesh Act. I think everybody would understand what I am talking about, but this is a very key element of the Act. It is one of the cardinal provisions which, in terms of equity and social justice, makes this Act a vast improvement over the 1894 British era Act. Without further ado, I would like to invite our panellists to give their take on the rehabilitation of project-affected- persons and, in particular, the experience of livelihood restoration. One aspect is the physical rehabilitation, restoration of the habitats. The other is, they have lost a certain livelihood, they have to be re-skilled, re-provisioned, you know, provided knowledge, skills, infrastructure, financial assets, technology, for a new livelihood. I would request each of our panellist to speak for ten minutes, and, hopefully, you will have time for Q&A, in the course of this session. I would first invite Mr Mahendra Payaal.

MR MAHENDRA PAYAAL,
*Head, PMKVY (RPL & Special Projects),
National Skill Development Corporation*



Thanks a lot for the opportunity I have today to speak on skilling. I have done some research on this topic, unfortunately, there is not much information about skilling of people either, of Sardar Sarovar or other cases. This tells how low it is in the priority for resettlement or rehabilitation. In our country, most of the time, the conversation is around compensation and other issues, we don't talk about livelihood generation, which shows that this important part of rehabilitation and resettlement is neglected. And the debate and the activity of government machinery is primarily focused on monetary compensation for land. I would like to address this point through my talk, and share my ideas on this. I would like to narrate my personal experience of rehabilitation that I have seen. I was a school student, in late '70s and early '80s when the construction of Tehri Dam was taking place. I would take a bus to my village which was in Uttarkashi, so we would pass through the city or town of Tehri and dam construction was in full swing. It was such a vibrant town, it was one of the few town in Uttarakhand, other than Dehradun, which had flat ground next to the river, vibrant town almost in the middle of the state, with bus stop, eateries. We would stop there and get down. I could never imagine that somebody would make a watery grave of this city, just to build a dam. Now, 40 years later, this town doesn't exist. The people who had moved out from there, actually, when you come to Dehradun you would see that, next to the forest, they had been given some land and some place to settle down. So, you could see a small shed that they had constructed and some cattle they would have brought along, when they were resettled here, or they may have purchased. Now, when these people were living in Tehri, most of them grew rice because there was abundant water. But, after relocation, they told me, that other than the cattle they don't have any source of income. That is where the question of livelihood generation comes. That was 40 years ago. After that, because of the Narmada Bachao Andolan, we are much more sensitive to these issues. But at that point of time, we never had a thought that it is not enough to give them compensatory land somewhere else, it is also a question of making their lives and that is where skills come in.

So, I will talk about how skills can be used for livelihood generation. I am going to focus on three steps, first, I



am going to focus on our Ministry, what we are doing, what kind of ecosystem exists and, second, my own anticipation of what kind of skills can help those people who have been resettled or moved out of their places, and third, I will try to bring together their requirement and the skill options, how they can be made use of.

I am from National Skill Development Corporation, we exist as a public-private partnership under the Ministry of Skill Development and Entrepreneurship. NSDC was created to develop skilling capacity in the private sector. Therefore, a lot of our orientation is through industry-related skills, where people can take, maybe, a welder or a beautician training course or something else which is industry-relevant. For that we have created sector skill councils which are industry bodies, so they are supposed to be our conduit to the industry. They identify what is required by the industry and make course curriculum, training programme, assessments modules, those kinds of things. We have about forty of them. NSDC has also started giving out loans for promoting skilling capacity in the private sector. So, if you wanted to set up a skilling centre, you could come to NSDC and take a loan and then setup skill centre and you could repay it after three years moratorium.

A separate Ministry was created in 2015, earlier we were under Finance Ministry, therein this Company was also given the responsibility of implementing Pradhan Mantri Kaushal Vikas Yojana, which is an ambitious scheme to skill about one crore people by 2020. Out of that, about 60 lakhs have to be freshly skilled, that is, you are a raw person, you are a college dropout or you don't have any skills, you can take three months' course, you can be given fresh skills, and the entire scheme is placement related. The last 20% tranche of the training

is linked to placement that is provided by the industry. In respect of about forty lakh people, their existing skills are recognized. If you have acquired your skills informally, like, in your own house, in your shop or your own business, your skills could be certified, that is what recognition of prior learning.

Out of the 60 lakhs of fresh skilling, 25 lakhs, to be exact, is to be done through the states and we have given the targets and budgets to the states to implement Pradhan Mantri Kaushal Vikas Yojana. Right now we are also trying to implement the modified, simplified new apprenticeship scheme of the government. Due to all this, a very vibrant infrastructure for skilling has been created. We also have Pradhan Mantri Kaushal Kendra. The Pradhan Mantri Kaushal Kendras are multi-skilling centres which are supposed to come up in every Parliamentary constituency. Funding of up to Rs 70 lakh can be done by NSDC, so a lot of infrastructure has been created around skilling through the efforts of Ministry of Skill Development and NSDC. You have various skilling centres throughout the country, almost all the districts are covered, you have a system of training, you have a syllabus, you have a system of trainers who are supposed to impart this training, you have a system of assessment and a nationally recognized certificate. This is the ecosystem of NSDC or the Ministry of Skill Development. There are other Schemes, there are 18 Ministries that are actually providing skill training. I am not going to talk about them, but there is much more than what I just mentioned.

In addition, we are also looking at making vocation or skill training a part of university curriculum or the school curriculum and a lot of work has also been done on that. A lot of companies have come forward to spend their CSR money on skilling. As the Secretary was mentioning, Coal India and others are also taking up vocational skilling as part of the rehabilitation of persons who have been displaced because of their projects.

The second part is exactly what would the people, whose land has been taken, require for skilling or livelihood generation. Actually, you should resettle and rehabilitate the displaced in a way that he doesn't require any new skills. In fact, if he has any way of making his life and

livelihood, he shouldn't have to learn more skills. It is very difficult at that point of time, there is a strata of people, among the displaced, who are old, middle-aged and it is difficult for them to learn new skills and then start new ways of livelihood generation. That is why a lot of studies say that resettlement or moving them out from that place should be the last recourse and we should not do that. So, if you have to move them out, I think, the next stage is to at least get them to a setting where they don't have to learn a new skill and livelihood generation means remain the same. Unfortunately, this doesn't happen much, government generally offers you a land which is at a distant place, which is not a very good land, obviously, government cannot acquire land and give it to you for your resettlement, so generally they give you land which maybe fallow or it's not taken or it's somewhere far away, the place is much different from where you have actually originated. If it is a shift of agriculture community from one type of land to another, then it would be proper to skill them or up-skill them about what grows in that area or what can be grown to get income in that area. It maybe cash crop cultivation, organic farming, some seed interventions, some soil testing, so, at least, those skills can help them settle themselves at the new place. So, he learns to grow crops which are relevant to the area or which he can easily sell in that area. Skilling is part of rehabilitation. Even a farmer, moving from one area to another, has to be re-skilled and upskilled.

It is much more difficult for tribals because tribals are not bound to land, and, generally, the answer would be to offer them land in some other place, If you decide to re- train them to a new kind of living, in my opinion, the need for up-skilling will be higher. A lot of time we also shift people who are not bound to crafts like artisans and craftsmen, who have a thriving eco-system at that place, where they have market linkages, where they get their raw materials, where they make their things, where they sell them. Skilling is required to establish them in the ecosystem at the next place. You will have to train them, may be, in the modern practices of making the same things. If it is the artisans, even if you are making the fabric, you may have to introduce them to computer designs, so that they can make more saleable designs or articles now, you have to connect them to market or



agencies which can take their stuff and sell them. You may have to support not just that generation but right till the next generation, 15-20 years, till the time they settle down in that area. So, the artisans, craftsmen will require a different strategy, different skills.

In case of farmers or the rural population, when they move from one place to another, they will have to be provided market linkages. It is not only about growing crops but also looking at ways and means of providing market for their produce. Only skilling for the sake of skilling will never work, you can teach them organic cultivation, but if you don't give them a market to sell it will not help at all.

You have to look at women here, that is one sphere in our resettlement policies that is neglected. Women are not the landowners, so, they are generally neglected. Women can be skilled in many ways which allows them to earn some income like- beautician or tailoring.

Finally, I'd like to say that there is an ecosystem of training centres and placement. Those who are willing to move and work in an area where industry exists or business exists can actually be trained to take up jobs there. But, at the end of it, it has to be part of the design of settling the people, it can't be a one-off thing. When you do the social impact and you take the consent, you actually have to ask them what they would like to do at the next place. And then you have to design skilling initiatives around those requirements which they have consented to do. And, like I said, it has to go beyond skilling, livelihood support has to go on for a really long time.

We have one example where we have actually worked with people who have been displaced, from their

original place of habitation. During the ethnic riots in 1998, Reangs, moved to camps in Tripura. In this case, we were asked by the Ministry of Home Affairs to skill them and get them back to Mizoram. We trained a lot of girls in those camps and we have been able to move them to Tiruppur in Tamil Nadu, where they now work in government factories. A lot of them have stayed on because they were provided support, they were offered food that they eat at their native place. Some people who had decided to stay back in the camps were given training in tailoring and the local paramilitary forces were asked to give them some contract for uniforms. So, that is one story where we helped in resettlement, though they were not displaced by a project.

I will also give you another example where we are working with farmers, along with different organizations within Maharashtra Government, where they intend to skill farmers over a week or 10 days in farming interventions specific to that area and bring them together into self-help groups to farm and sell their produce to companies. Another organization in Odisha wants to train farmers, not only in growing their crops and marketing them but also processing them.

These are two specific examples which, I think, you can modify and adopt them to any case, as long as you keep in mind that the skill is only a part of the process, you have to support him for livelihood. I will conclude by saying that there is a lot of capacity in terms of ecosystem, in terms of infrastructure, trainers, skills, industry placement that we can offer you as part of Ministry of Skill Development at NSDC. But the design has to be yours, the people responsible for rehabilitation have to decide what kind of intervention has to be there after taking the consent of the people who are going to move out. That is all I have to say. Thanks a lot.

Dr Ghosh: Thank You Mr Payaal, for this overview of the process of re-skilling and what rehabilitation of livelihood entails. The question arises, say, you have an organization like Coal India, and it acquires land, people have to be relocated, rehabilitated and they have to be re-skilled and their livelihood has to be restored, the coal mining engineers in Coal India are least qualified, by experience or training, to undertake this major effort. So, we need

organizations and people who have the necessary skills, in order to partner with organizations like Coal India. I don't intend to target Coal India. This is just an example, maybe, we might be able to get some insights on this from Shri Pranay Kumar, he is MD for Consultants for Rural Area Linked Economy, or CRADLE, Mr Kumar you have the floor.



SHRI PRANAY KUMAR, MD, Cradle

Thank you Dr Ghosh. I will just pick up from where Mr Payaal left, that skill and livelihood are two different things. I will restrict myself to how we can work on livelihood restoration within the parameters of this Act. This Act has a provision which takes care of livelihood. In schedule II under Section 16 we have to assess livelihood losers. Basically, the problem is that we have translated everything into cash compensation, losing artisans to be give Rs 25,000, losing job Rs 5 lakhs. People are relieved that today's problems are over, but for large projects the problem remains. The second generation will be a problem, unless and until we take care of livelihood, right from the beginning, from the first generation, because the cut off is 18 years of age, after 18 years of age it is a separate family. Those who are 12 years old now, their whining will start after five years after person becomes a major. One person in the family who gets a job will get married and shift to another open cast project. And the rest of the family members will remain in that particular

village and they will be agitating. These are the issues which have to be addressed in rehabilitation. It is not a short term problem. Give 5 lakhs he will not shout, 5 lakhs is substantial money in any rural area, nobody will shout now, but for how many years it will remain with them? Therefore, we need livelihood planning. And that has been taken up in many places by CSR.

We are ready to give Rs 5 lakhs because the project proponents are, as Dr Ghosh was saying, why should a mining engineer bother? It is better for them to pay 5 lakhs of rupees and do away with the hassle of working on livelihood creation. But then, there are organizations, which are acquiring land and planning for livelihood. Definitely, Coal India's livelihood policy is one of the best and it is sustainable. I can give the example of Mahanadi Coal field, in 1998, it was suggested to them that they should engage in livelihood generation which is dependent on coal. It was suggested that they can create

that mining has disturbed the entire pattern of life of local people but many people of that particular area said that their standard of life had become much better after the mining operations had started.

So, we have both the sides of the story, in mining areas each family has some source of income. I will give you an example of how important livelihood is in mining areas. We all know that Jharia mines have been burning and anybody can die anytime, because, everyday there are two-three casualties. But nobody wants to leave that place. One SIA specialist asked a local man, "Do you know you can die any day"? The person said, "Do you know when you will die? You can die any day, I can die any day, if my life is only up to tomorrow I'll die tomorrow. I don't know, when Humayun, who was a king, could fall down from stairs and die, I may die by sinking into the coal mines, so don't tell me we will die, we will not shift from this particular place". Livelihood is life. Why do we



an insurance cooperative and take out insurance policies for vehicles, equipment through that agency. In 2018 it was confirmed that the agency is still functioning and the commission is coming in crores. Many people who were the original member of that cooperative have died and their sons and daughters are now the members, so still the families are earning. A recent study of a mining area had focussed on the agitations with activists claiming

oppose acquisition, because, land is an insurance of life. I want to marry my daughter, sell some land, I am sick, sell some land, so it is an insurance, therefore, we oppose it. There should be a sustainable income in any R&R. My reservation is that, except for Section-16, this Act does not talk about any livelihood. Only some international agency funded project, which constitute, only 0.2% of the total GDP, take care of livelihood generation. The

remaining 99.08% of internally funded projects are not taking care of it. So, we have to institutionalize our livelihood plan. We must think that cash compensation is not an option, job is not the option, because, many a time, job is creating a lot of discord in the family.

As far as the planning for livelihood is concerned, it should be created as a part of the project, because, it is very seldom that people will move out. The proponent should give the work of livelihood planning and implementation to a specialized agency. We have livelihood mission, we have skill mission, identify the beneficiary, give the fund to these agencies and ensure that it is implemented. A mining engineer should do mining and a livelihood specialist should do livelihood plan.

We have good examples from NTPC, where income has been generated, as part of the project, generation after generation. Ok, there were cases where compensation for land was not paid. To take an example, 5000 people are migrating to the project site, they will take one litre milk, so you have a daily market of 5000 litre milk. If it is a meat eating state, you have a market for chicken, mutton, eggs, bread, there are so many things. Say, if the plant is at Angul, nobody will come from Delhi and sell these items. When a project comes, there is a local market, there cannot be a situation that local market cannot be generated. If five thousand people with an average salary of Rs 30,000 are spending 80% of their salary, you can calculate how much monthly expenditure is there in that particular market. So, we have to look at the expenditure and, accordingly, you can plan the livelihood. For example, the lady, or the person working in your colony will not become a thief, they will always be loyal to you. Therefore, always have a partnership mode in livelihood. That is all from my side.

Dr Ghosh: Thank you Mr Pranay Kumar. Now, I will call on Dr Parthapriya Ghosh, who is a Senior Development Specialist at the World Bank to share his views. Hopefully, he will be able to tell us something about the international experience in livelihood restoration of PAPs, because it is not something peculiar to India. It will be useful to hear about the experience of the Bank, across the world, including in India.



PARTHAPRIYA GHOSH,
Senior Social Development Specialist,
World Bank

Livelihood is one of the issues that come up in most of our projects, more so, after our experience in 1991 when the Bank had to withdraw from Sardar Sarovar project because of loss of livelihood of the tribal families. So, most of our Operating Policies have been replaced by the new Standards. Livelihood remains an issue and, because of the larger goal of poverty alleviation and shared prosperity, it is important that we look into loss of livelihood in any of our project. As Mr Krishnan said in his key note address that acquisition of land needs to be avoided if it is fertile, the Bank is following the same philosophy. Try to avoid impacts as early as possible, if you cannot avoid that, try to minimize the impact and then mitigate. Therefore, it is important that whenever we do a social impact assessment, we look into these issues. We have to ask whether it is necessary to acquire that piece of land and deprive somebody of his livelihood, or can we bypass that land and have another alignment for the project? Maybe we can squeeze the area and see that not those many people are impacted. So, an analysis of alternatives is possibly one option, which can help us in lessening the number of PAPs losing their livelihood.

Having said that, we also understand that livelihood planning is an imprecise art, we cannot have fool proof plan. We tried that in India, where the Bank is working on 165 projects now, we don't see one good example where we can say that we restored the livelihood of the



impacted people. There are several factors to it, and I will not be getting into those factors. Yes, there are issues in restoring livelihood, because it's not just the project which has to do that, it also relates to the attitude of the person who is getting impacted. Mr Payaal talked about Tehri losses where the entire city got submerged, people lost their houses and lost their livelihood. Tehri Hydro Development Corporation has come a long way, we have Mr Naithani sitting here amongst the audience, he is dealing with the loss of livelihood in another dam project of THDC in Vishnugarh, where they identified agencies for training the people. A specialized agency is giving trainings for all kinds of livelihood. But, after three -four months of training and even after they were absorbed by companies like Tatas, people came back saying that the project is being constructed in this village, we need job in THDC. Why should we go to private sector? And then your livelihood plan fails. But, I guess, wherever we have successful examples, it's only possible if livelihood is taken as a component of the project, if it remains a part of main investment project, livelihood is restored over a period of time. However, often it doesn't happen because the focus always remains on LA. The idea is to give land free of encroachment and encumbrances to the contractor, so that you don't have to pay any kind of extra charges, so free up your land, give it to the contractor, we will take care of livelihood, that's the approach in most cases. Therefore, of late, we have started making this as a component of the project, with its own budget and its own time frame. It happened in India itself, we have this Integrated Coastal Zone Management project in Orissa, where, over 75,000 people are losing livelihood because of coastal regulations. The people were taken out of debt,

now the people in 672 villages are debt free, just because livelihood restoration was a separate component. There was a team which was dealing only with livelihood, they had nothing to do with the main investment project. So, either we take that approach or we give enough time upfront to the project to ensure that the livelihood of people is restored only after that investment in the project can begin. But that will not be the case, we have taken the loan, we are paying interest on that, why should we wait for people to get their livelihood restored. As long as we get the land free, contractor can start their civil work the project will begin. So, there has to be a change of attitude, that is what Mr. Krishnan said. Initially, it will not be easy, it will take time for their attitude to change.

But, over the period, people are becoming more and more aware, we have stoppages of work by PAFs because of loss of their livelihood. Even if we have NGOs, in most of the project we say, fine, it's an engineering company and they will not understand what skill development is, what restoration of livelihood is, let us hire an NGO. But when terms of references are prepared for the NGO, they are given a one-year period to prepare micro plan for all those who are losing their land, restore livelihood and give encroachment- free land to the contractor. Timing become an issue, the focus remains the same. So, over a period of time, the Bank has realized, not only in India but elsewhere also, livelihood has to be a separate component, otherwise, livelihood restoration will not happen in the true sense. Giving cash compensation to them, giving allowances to them, it may increase their cash in hand over a period of time. Most of the mid-term reviews will show that they have got higher income, without taking into account that they have been given cash compensation recently.

We fail to understand that there are indirect sources of income, which have not been covered in baseline data. The baseline data normally, like post base-line takes two-three years for the project to come in, there are various government schemes which has come in between which have contributed towards the larger income of that household, so we are taking all that into account. So, the actual data which shows that we have restored livelihood, is a false data. It doesn't show the actual contribution of the project towards improvement of livelihood. There are

courses which various universities are running on R&R and livelihood, IGNOU and some others have gone into R&R in big way. But, we lack professionals in the field, we have NGOs that's true, we have consultants that's fine, but that's a very small community.

I thought Pranay will talk about his Bagodar experience in NH-2 where an entire market was uprooted because NH was being widened. Pranay was responsible for the resettlement and rehabilitation of all those vendors who were there. It took three years, Pranay, correct me if I am wrong, no, seven years, to get the land for those vendors, ensuring that a vendor market is created, and establishing rules that there will be no more encroachment on the road, so that the vendor market flourishes. But then, he went beyond the terms of reference and it doesn't happen all the time. It was a bank-funded project so I know about this example, but there will be several such examples. The only thing I want to pinpoint here is there are isolated success stories, we cannot say that in every project we have been able to do it. Our end-line survey shows that 80% people restored their income and we celebrate that at least 80%, but what about those 20%.

Then, there are managers those who say I am not taking away his entire land I am just taking away 10% of his land, so, shall I restore only 10% of the income lost, or shall I ensure that if a person is below the poverty line then I need to bring him above the fold, above the poverty line. So, the definition of income restoration is itself fluid. And, some say that if I am compensating for the asset that I am taking away, I have paid him, right, he can go and purchase land elsewhere and start cultivation again. Land for land is an issue, there is no land, but I am paying him enough, we are paying market value, so one can purchase land, without realizing, that post-acquisition, market value changes. The speculation creeps in, the amount of compensation that you pay is not even good enough to purchase 50% of the land that was lost. I guess, we don't have many options other than saying that we need to look into it seriously and see it as an investment and not as a burden for any developmental project. I will end here.

Dr Ghosh: Thank you Dr. Parthapriya, for this overview, for showing how complex the problem is, that there are no

easy solutions, no standardized cut and paste formula. Our final panellist in this session is Shri Anirudh Kumar, he is Joint Secretary Ministry of Power. You have the floor, Mr Kumar.



MR ANIRUDH KUMAR,
Joint Secretary, Ministry of Power

I am from the Ministry of Power. We are always at the receiving end in such conferences, we are executing those large power projects and we are often the centre of criticism that we have not done that or we have not done enough. So, I look forward to this event as an opportunity to learn because we are directly affected due to such issues. A large number of my projects are stuck and billions of rupees of government money are locked up in these projects. One project is stuck up for last seven years and there are so many examples, billions or, I will say, trillions of rupees of my and your money, is stuck up in these projects. Maybe, the reason is not adequate R&R policies or livelihood policies. We are an underdeveloped country and we need to provide a basic dignity of life to our people and that requires development of industries, development of infrastructure and development of commercial complexes. Land is a basic ingredient, you need land for roads, land for airports, you need land for power plants. You need land for commercial complex and residential complexes also, our per capita consumption of electricity is just 1100 unit, as of date as compared

to 10,000 units in the developed world, even the global average is 3000 units of electricity per person per year. So, we are way behind and we have no option but to build more power plant, more industries and more commercial establishment if you want to provide employment to our large number of growing population and for that we require land. And, acquisition of land will always involve displacement of some people, that is a challenge, how do we minimize the impact of displacement on the lives of these people, it is always a painful process to get uprooted from a place and settle down at a new place. That is certainly a difficult process and one of the problems is that most of the infrastructure projects, be they power projects or road projects, they are headed by engineers. Generally, they neither have the training nor the aptitude for resolving these kinds of issues. Till very recently, this area has not been the focus, the focus of the engineers, the focus of the project managers is on the faster execution. R&R is always a very secondary issue for him. When there is an agitation, his attention is drawn towards the problem only at that moment. And it is a sort of an emergency situation. Most of the time, his energy is focused upon execution of projects and procurement. It's good that the new LARR Act has given special emphasis to R&R, the Act has been well received. Some attempts have been made to dilute the Act by the state governments but the courts have not been very charitable towards those amendments.

From our side also, there are problems. When I ask my project authorities why the project is stuck up, why the people are not happy with the project, they say that the process is so long drawn out. We have to conduct so many public hearings for different things, we need to conduct a public hearing for drawing up the R&R plan, we need to have a hearing for SIA studies of that area. Another hearing is required for environmental clearance and another public hearing is required for the Forest Rights Act. So, you need four or five hearings before you get the clearance for construction of these projects. That is a time-taking process and infrastructure projects are often very capital-intensive projects, delay virtually kills the project. I will give you the example, of Subansiri project, when the administrative approval was given, the cost of the project was estimated at Rs 6000 crores, it is stalled since 2011



because of the local resistance. Now the project cost has gone up to Rs 20,000 crore. So, that is the kind of loss we incur because of delays in these projects, certainly, R&R it is an important area for the Ministry. Because, the bad R&R policies or bad R&R schemes not only affect the people, it also affects the projects adversely. It is equally important for us to see the right kind of policies, the right kind of schemes, in place, and we do try to take care of people, as much as possible.

Mr Pranay has said that NTPC has been one of the leading Organization in the power sector and they have done pioneering work in framing R&R policy. It is the first Organization, the first PSU to come out with the R&R policy way back in 1987, which has been revised in 2017. They have drawn up a very decent R&R policy focusing upon livelihood restoration. The first thing is that they try to provide job to as many people as possible in the project itself. But, in a capital intensive project the job opportunities are not so many. A 2000 megawatt plant can offer jobs to a maximum of 1000 people because the man-megawatt ratio is 1000. Out of those 1000 people, at least, 800 people require very high degree of skills, normally graduates and management graduates. So, there is very little possibility to accommodate local people in those projects, they can be accommodated only for very low-skilled job.

The second thing is that we engage a lot of contract labour during the construction stage. Our policy is that at least 80% of that labour should be from the local area. Then, whenever a project comes up a decent township is established. I invite all of you to visit a township in

any of my projects in NTPC or THDC, you will see how decently those townships have been built, they have good markets, they have good facilities for shopping, at least, 50% of the shops are reserved for the local people. And 80% of the kiosks are reserved for the local people. We engage with the training institutes and provide skills to the displaced people and try to get them employment also. Every project generates a lot of secondary employment opportunities, apart from contract labour. A lot of vehicles have to be hired for transportation of material, for transportation of people, a lot of secondary services are required like housekeeping service. So, they also generate employment, we issue vendor permits to the people to do the street vending in our colonies, so it is a very elaborate arrangement which we have to make to protect and restore the livelihoods of PAPs, but I accept that a lot more needs to be done. I believe that a lot depends on the attitude and the aptitude of the local head of the project, he is the champion. I am very open to any suggestion that you want to make to customize our R&R policy, make changes in our R&R policy. You are always welcome to my room, my coordinates are available on the Ministry's website.

An unfortunate part that I have observed is that there is too much focus on government jobs. Many people who are settled happily in some vocation or some profession, even they keep on agitating for government jobs. Everybody wants a government job, not all the people can be accommodated in government jobs. Despite providing them good training opportunities, good employment opportunities, alternative employment opportunities, everybody is hankering for a government job. That is a real challenge for us and we are not able to find a solution for it and we are stuck up in large number of projects.

Mr Mahendra Payaal spoke about Tehri, I will share a small story with you. This project involved submergence of 5200 hectares of land, in totality, 22 villages were completely submerged, 87 more villages were affected, in addition to the old Tehri town. Some of you must have visited the new township, it is a model township, you must go there. It has a degree college, it has an ITI, it has an engineering college, a decent hospital, it has banks, it has all kinds of facilities, which are required to

live a decent life in a town. In totality, 5300 families have been re-settled in this new Tehri town. And, the people who were partially affected by submergence have been resettled in 18 resettlement colonies, spread over Haridwar, Rishikesh and Tehri. We have spent 1500 crore on the rehabilitation of the people, which is probably the highest in India. 18% of the total project cost has been spent on the rehabilitation of the people, which is a humungous amount. We got a study done by the Administrative Staff College of India, Hyderabad. They have come out with very satisfying reports, that shows that after the completion of Tehri, the standard of life, the quality of life of local people has gone up many-folds in that area. I am very happy to share this experience and I request you to visit any of our project, the Tehri town, or any of the NTPC townships. They have the best schools, they have the best hospitals. From every NTPC township, every year, at least two or three boys are making it to the IITs. From the Central School in Rishikesh township, two or three boys are entering IIT, every year. They are imparting high-class education, they are providing decent kind of medical facilities. We are open to suggestions, any kind of new ideas, we are open to changing our R&R policies. That is all that I have to say. I will be happy to answer any questions or comments. Thank you.

Dr Ghosh: Thank you, Mr Anirudh Kumar for your optimistic account of the impacts of the R&R policies of the Ministry of Power. Now, the floor is open for questions and comments, we have about ten minutes left in this particular session, so, I think, we can accommodate three or four questions. Please raise your hand.



Q&A Session

Mr Rishi Mendiratta: My question is to Mr Anirudh Kumar. Sir, you just said that you have a resettlement policy, wherein so many townships have been set up. What is your assessment of the satisfaction levels of the people who have been resettled, specially, when they have not been given government jobs but they have been given a lot of reservation in kiosks, shops etc.

Mr Aniruddha Kumar: We have not done any formal study to assess the satisfaction level, we have done studies to assess the quality of their life. I started my career from Singrauli, one of the NTPC projects in Eastern UP, which is on the border of UP, Bihar and MP. When I joined there in 1984, it used to be a sort of a jungle, now you go there, it has a shopping mall, it has a cinema hall, it has decent schools and colleges, it is nothing less than a metro and many people who went grudgingly to NTPC Singrauli have decided to settle down there. This is an indication that people are satisfied there, that is why they have decided to make it a permanent home.

Mr Rishi Mendiratta: The idea behind asking you this question was that if, in your assessment, it was a really good exercise as the end results indicate, even if a formal study has not been done, then this can possibly become a role model for many other projects. So, instead of us giving you suggestions to make changes in your policy, it should be the other way around, that we learn from it and try and implement it.

Mr Aniruddha Kumar: I am more sensitized today, after this workshop. This has not been occupying too much of my mind, so far, in future I will be devoting more time to this aspect of the project management.

Dr Ghosh: I have a follow up question. Was all this rehabilitation, resettlement, livelihood restoration done by the regular project staff of NTPC and NHPC or were there agencies, may be NGOs, may be other organizations, who acted as an interface between the organization and the project affected persons?

Mr Aniruddha Kumar: It's a mixed policy, somewhere there have been some agencies, professional agencies have been engaged to carry out the livelihood

restoration projects. Some of the project authorities have done it themselves, particularly, NTPC has quite a strong department in this area with a sizeable number of people and there are very strong policies but we have used professional agencies to provide for livelihood restoration in different areas.

Dr Dimple Tresa Abraham, Centre for Women Development Studies: In any project where there is displacement of households, resettlement and rehabilitation, is there any focus on single-women headed households? Let us say, hypothetically, in around 100 households there are five or ten single women-headed households, is there more focus on them, because they are more vulnerable than the rest, on restoring their rehabilitation or livelihoods?



Mr Aniruddha Kumar: I don't have any specific information on the question which you have raised, but, to the best of my understanding there is none. I am frank to admit that we are not so savvy, to focus on a particular target group. But, definitely, in future we will keep this in mind. When we receive the recommendation of this Workshop, I will circulate them to all my Public Sector Undertakings. Yes, that's a very valid area, in fact, my mind has never gone in this aspect.

Dr Dimple Tresa Abraham: It is always like this, the land will be with joint family, let us say, there are four brothers, maybe, one brother is no longer there but his family is there.

Mr Aniruddha Kumar: I have told you, ma'am, in the beginning, that the projects are headed by engineers who

neither have the training nor the aptitude, inclination for these kind of issues. Their priority is more on the execution, timely execution of the project, this is one of the jobs which is being done by them, we will definitely keep this in mind.

Dr J Rath: As part of NMDC I was associated with this sectoral Skill Council, there are 25–30 Councils, NSDC as a nodal agency, what is the linkage between the two? There is no linkage, as I have experienced in NMDC. NSDC should coordinate between different Sectoral Steel Councils and identify the skills. But, after training they want job. I am giving the example of Bastar -Jagdalpur, the tribals constitute 70% of the population there. They are trained as fitter, holder, but they do not get jobs. How is NSDC planning to facilitate jobs for them?

Mr Mahendra Payaal: As far as NSDC's role goes, we work with SSC. I said in my talk that when we discuss skilling we are primarily focused on industry-related jobs, the sector Skill Councils were created as industry representatives or the sounding boards for industry requirements, so, most of the job roles are created around the industry requirements. Yes, they may not be aligned to what may be required by the tribal population or for some specific project. If we are looking at skilling for a particular project or tribes in an area, we have to incorporate it in the design stage and link it to the livelihood. If we know that for this livelihood generation we require this skill, then the course content and the training methodology can be suitably created. As of now, it is market driven, so, if there are people willing to be trained, NSDC or Government is willing to pay for those skill training. You are talking about job roles, skills to work in the iron and steel sector.



But, what we actually need to rehabilitate people in Bastar is different. I mean they need to have some job skills which they can use in their local economy and increase their income. So, it is totally a different aspect altogether and we have to look at the place, the people, their willingness, their desire, and then make a job role, or skill around that. It's got very little to do with actually the factory or industry which exists there.

Dr Nirmala Buch: I think that market linkage is crucial. Whether it is the question of job or selling, if the market is identified for the skills, then skill development works. But, if you train people thinking that this is the required skill, then there is a problem, they will come to you for employment. So, is there any way of identifying possible markets for the skills or for the production. You know, even a person in the informal sector *jo kiosk lagatey hain, woh sab tarike se dekta hain ki yahan pe log aaenge, uska bada informal system hota hai of identifying the market* (one who operates a kiosk, he looks at every aspect of how the customers will come, he has an informal system of identifying the market). *Sab log yahan aake chai piyene, yahan se bhi aenge, idhar se bhiaenge* (everyone comes here for tea, they will come from here, they will come from there) so he knows what to do and how to do it. What we were looking at is how to identify possible markets, you talked about Singrauli, *Singrauli toh green field area usme intna kuch tha hi nahi* (Singrauli was a greenfield area, it did not have anything). If there was a market people could come from anywhere. *Singrauli toh bahut chotasa area hai*, (Singrauli is a small area), people could come from anywhere. But what about other places, it may be Bastar, it maybe Dantewada, it maybe Raipur, there should be a training of people who want to involve themselves in how to identify a market and then go for skill development. The Skill Development Corporation, *skill toh teen mahine mein de doge uske baad kya hoega*, (skill can be given in three months after that what will happen) then we have a problem, *ki aap humko naukri do, humko dukaan do* (you must give us jobs, give us shops) this doesn't work out. We talk about entrepreneurship, we tell them how to do this and how to do that, we don't tell them what is the risk. What is the risk-taking ability, entrepreneurship is taking a risk *woh sabke bas ki nahin hota, woh hum kisi ko sikhate nahin hain, woh kehte hain*

humko aapne seekhaya, ab humko market do, humko naukri. do, toh woh toh possible nai hai. (that is not every body's cup of tea, we cannot teach that to others, they say you have trained us, now give us a market, give us jobs, now that is not possible).

Somewhere, we should develop a system of telling them what is a risk-taking ability, what is entrepreneurship, that you take a risk, *yahan pe dukan lagatey ho, yahan pe kiosk lagatey ho kaise usme income dekhtey ho,* (you will set up a shop here, put a kiosk here what income prospects do you see). The organizations which are going to work with you must identify the potential markets. It maybe for dressmaking, it maybe for beauty- parlours, so on and so forth. Let me give you one or two examples, in Madhya Pradesh a lot of districts tied up with Hindustan Lever, they said they will train women and they will buy all the food produced. The Chief Minister Mr. Bagga was involved, at that level everything looked fine. But when the production started, the company rejected everything. *Ye bhi thik nahin hai, woh bhi thik nahin hai,* (this is not good, that is not good). The women were

very upset. Our organization, which is in Hoshangabad, trained these women on how to do costing, marketing, brand marketing. After the training these women said, "to hell with you, *humko Hindustan Lever ko nahi bechna*" (we don't want to sell to Hindustan Lever). They made their own brand. They said, "*humara bhartiya brand hai.*" (this is our Indian brand). *Jake unhone zyada paise mein bechdiye* (they went on to sell it at a higher price). So somewhere, in the system you have to include training on how to do market identification, what are the different types of market, whether it is for skills or for products. Secondly, how to become a real entrepreneur, risk taker, *humare yahan risk taker toh koi hota hi nahin Gujarat mein hota hai, par singrauli mein nahin milega. Jahan hum kaam karne jaate inhaan wahan hume nahi milta* (we don't have risk takers, risk takers are in Gujarat but you will not find them in Singrauli. Where we go for works there we do not find risk takers). We can also think and give you some suggestion then, whenever you train people they will know what to do. *Aap ke paas fir se nahi aaegey* (they will not come to you again). In fact they will train



you later on. So, we need to first identify a market for the product, or their skills and then do the training. *Humarey skill development woh teen mahine ke training mein kehte hain placement, placement toh hota hi nahi, kahan hoega* (In our three month skill development training they talk about placement, placement does not happen, how will it happen). We require a lot of thinking about the training programmes that we are going to offer. If you need any help, I would also like to do something.

Dr Ghosh: Indeed, this is the hardest skill of all, to identify markets and to inculcate risk-taking abilities and I doubt that our Indian Institutes of Management succeed in training their IIM graduates in that. Yes, there are conundrums which cannot be solved, but, of course, we should also remember that the persons receiving the training, receiving the resources, are not dumb or stupid, they perceive the world, they have the innate ability of risk taking, of entrepreneurship, at least, some of them have. I think, if we do a retrospective of many of the projects which have happened, before the Jairam Ramesh Act, my own intuition is that we will find that a significant number of displaced people were able to utilize the opportunities which had been created, without necessarily having received any support or handholding or training or entrepreneurship development skills from the agencies concerned. But this is something a fertile field of research, and it may help us to go forward with the challenges which have been thrown up by the Jairam Ramesh Act. We have to close this session at this point and break for tea. The agenda says there is a question and answer session, now, I can see a whole lot of people who will ask questions, I don't see exactly who will do the answering.

Mr Aniruddha Kumar: Sir, before we close I have a few suggestions for Mr Mahendra. I have been thinking about the markets. You go anywhere in India you have lots of street food vendors, dhabas, carts people selling food on the streets, and if you go abroad they have such beautiful street food vending zones, and many times, they are themselves the attraction for further tourism. They become the focus of tourism, so, if you go to any of the tourist places in India say Badrinath or Kedarnath or Gangotri or Mathura or Brindavan you have thousands and thousands of street food vendors. But they lack the

presentation skills, they lack the basic knowledge of nutrition and hygiene. If the National Skill Development Corporation can organize a small course for providing basic skills in nutrition, hygiene, presentation and packing, I think that will go a long way and it will have a very good multiplier effect. I think, a fifteen day course will be good enough to train them in these small aspects of street food vending. I can give you participants for your course, that, I can assure you.

Dr Nirmala Buch: You know every informal sector worker has a problem with the law. *Koi usko khada nahi hone dega, koi usko ghumne nahi dega, koi aapko traffic kahe, wagera wagera*, (Someone will not let him stand there, someone will not let him roam with his cart, traffic man will stop etc. etc.). They have all those problems in the informal sector, which is where most of the people are engaged. You have to find ways of assisting them to be able to work within the law. *Bada dukaan wala bhi usko bhgaega, law bhi kahega ki aap yahan kyun khade ho, ye toh app leke bhago wagera*. (Big shopowner will also chase him away, law will also ask him why is he standing there, go away from here). So, somewhere you will have to deal with this issue. When you said about the street food wallahs, they will not be talking about the hygiene, which we may like as consumers. *Usko toh kamaney ki zaroorat hai*, (He has to earn income). We do a lot of micro-finance we find that *ek thela ka paisa le k eunhone dus bana liye, sab paani puri* (with the earning from one cart they start



ten, all selling panipuri). It is the most difficult part, how to comply with the law, because every informal sector has to face problems from the law.

Mr Pranay Kumar : We have so many entrepreneurs so the only thing we have to see at the project level is how to channelize that thinking, document it, and implement it systematically. We have solutions. India has several laws we don't need any more Acts. What we require is to systematize, document, implement properly with a good spirit. Thank You.

Experience sharing by participants

Joyita Ghose: We will start with the final session of this two day conference, and this session will be more about sharing your own experiences, and all of you come with a lot of your own experience. I would like to request Dr. Ghosh to please begin the session.

Dr Ghosh : This session is about experience sharing, many of you come with actual ground level practical experience of implementation of the Jairam Ramesh Act, I keep using that because it is easier to understand that, it is not a mouthful like how the acronym is. You have experience of how easy or difficult it is to manage the process of the Jairam Ramesh Act, and you also have prior experience of dealing with the earlier Act. You are able to compare the two experiences, not only the ease of undertaking the process of LA but also with respect to the sustainability of the project, which has emerged from this process. So, the floor is now open, you are requested to give your experiences, not ask any questions, because I, certainly, am not qualified to answer your questions. So, please go ahead.

Dr J Rath: I will tell you about the experience of NMDC. We have a 3 million ton capacity steel plant that is ready to be commissioned. In 2010, in the first phase of LA, we paid Rs 2 lakh per hectare. We paid the money, but as per the R&R Policy of Chattisgarh, we were asked to give compulsory employment, only then would land be handed over. Giving employment to 3000 people was a challenge because it is a high-tech steel plant but we told that we will give employment, because we have to get land. Chattisgarh government said that if you don't give employment, and employment can be given only after



the plant starts operation, you have to give them the starting salary, minimum wage as stipend, for two years. This caused problems because they will sit in their house, they will not come to the plant.

After this Act became applicable, the second phase of land acquisition started, land price became Rs 30 lakh per hectare. We told the present day Chief Minister and local MLA that we cannot purchase 1000 acre land at Rs 30 lakh per hectare. The GOI will not pay anything. Then, they came down to Rs13 lakh a hectare. In the second phase, we told that we will not give employment. This Act tells you to give compensation, you don't have to give employment. So, we started training them, so that they will be absorbed. It is a business requirement to train them, we saw in that way, it is not the requirement of the Act to train and absorb them. It is our requirement as a business policy. We have our own polytechnic where we train them. Of course, there is expectation of a job, 500 land losers are waiting, but we told them that we cannot take them into service. We can arrange auxiliary employment. To conclude, our experience with this Act is that, for mining purpose, land acquisition is not a problem, because the ores are in hills so there is not much displacement of people, unlike coal mining, which is done in plain area. We spend about Rs 150 crores every year on CSR, beyond the two percent stipulated by the Act. My personal experience is, Act or no Act, if you satisfy the local need, any industry will come up. Thank you.

Dr Abhijit Guha : I have some practical suggestions about how to move this wonderful experience of attending the National Conference forward. I listened to everybody's views, sometimes asked some questions, so, my specific suggestion is that, if we have to gain something out of our experience, we must write down the proceedings. Right now I was suggesting to Dr. Das, that what she has done is very pioneering, very much forward looking, so we have to move further. And in order to move further, our specific responsibilities have to be set down. So, my proposal is that each one of us should write down our suggestions, based on our experience of this new Law and send a write up to Dr. Das. She will wrap it up and it would be wonderful to send some suggestions to the Government. Unless we do it, all the money spent on our dinner, lunch and accommodation and airfare will go waste. So my humble suggestion is, let us not end here, we should keep in touch with Dr. Das and we should be doing our own duties, writing about what we have learnt. Thank you very much.

Dr Ghosh: It is a very useful suggestion. In any case, Dr Preeti Das was going to prepare the proceedings of this conference, but, I think, this is an additional suggestion you have made and she can kindly take that forward. So, who else would like to speak?

Person 3: Actually, I want to highlight some difficulties faced by Coal India in implementing this Act. Because, Coal India is mostly acquiring land under The CB Act and The CB Act is included in schedule IV of The RFCTLARR Act. Section 105 of the RFCTLARR Act mentions that within one year of its enactment, the provisions of the Act will be applicable to the 13 Acts placed in Schedule IV of the LARR Act. But, somehow the Government could not do it so it issued the Removal of Difficulties Order. As per that Order, we have to pay compensation for the land acquired under The CB Act, as per Schedule-I, R&R as per schedule -II, and infrastructure facilities as per Schedule-III. Now, in The RFCTLARR Act, R&R is to be provided to affected families and the definition of affected families includes those whose primary livelihood is lost due to acquisition of land, he may not be owning land, but he will be entitled to get R&R benefits. Now, the question for Coal India and its Subsidiaries is, who will identify them? In LARR Act, the Collector is the 'competent person' and

state government is the 'appropriate government'. But, in our case, no such clarification has been provided by the Coal Ministry, so, who will identify the livelihood losers.

The second problem, sir, is that Section 96 of the Act mentions that income tax will be levied on compensation and R&R money received by the affected persons. Subsequently, in 2016 the Income tax Department has issued an order exempting income tax on these amounts. Now, the problem facing Coal India subsidiaries is that the affected persons are saying that when you are giving compensation under the LARR Act why is income tax being deducted, when income tax is not leviable? We have taken up the matter with our Ministry but, till date, we have not got any clarification, whether income tax is to be deducted or not. These are the issues which have to be looked into. I request Madam Das that you might highlight this at the appropriate level. Thank you, sir.

Person 4: As far as compensation amount is concerned, Section 94 of the new LARR Act says that no income tax is applicable on the monetary part of compensation received under this Act. The 13 Acts of Schedule IV, in respect of which the Executive Order dated 13 August, 2015 was issued, has clearly stated that compensation and other benefits will be offered as per Schedule I, II, and III of LARR Act. Once you are giving the monetary



compensation and award, as per LARR Act, income tax will also be applicable to that.

Person 5: Only on capital gains it can be levied.

Person 3: Section 4 of PESA provides that if any acquisition or alienation of land is done in Scheduled Area, then you have to consult the Gram Sabha. In RFCTLARR Act you have to take the consent of the Gram Sabha. There is consult and consent, but in The CB Act there is no such provision. We are in a fix about what to do?

Joyita Ghose: I will just make a few announcements and then I will invite ma'am to come up. Firstly, a link with all the photos will be shared with you on your email addresses. All the contact details of the other participants as well as the speakers will also be shared so that you can be in touch with each other, and share your experiences. We had already said that we are planning to put together all the policy recommendations and share them with the concerned agencies. I now invite Dr Preeti Jain Das to please deliver the concluding remarks.

Concluding Remarks by **Dr Preeti Jain Das, Senior Fellow, TERI**

Friends, we now come to the end of this two-day national conference and, I hope, you found this conference instructive. For our part, it was a sheer delight to have you in our midst, we have learnt a whole lot, and I would really want to take this conversation forward, because, this is not a one-off event. The policy suggestions that we will compile and the proceedings that we will put together will be shared with all of you, shared with the Government, with ministries and state government, as well. We have come together for a purpose, it's important that we continue working, endeavouring to take it forward. And, we will also be placing some of the material on our website, the excerpts of speeches, video clips etc., we will be placing them all on our website. It will take us a week or ten days to start that process. So, thank you very much for joining us in the two-day national conference. Wish you all the very best and Godspeed.





WAY FORWARD

1. Updation and computerization of land records
2. SIA should be compulsory for every project to fulfil the Objective of the Act as enshrined in its Preamble
3. Capacity building of SIA Units, SIA agencies, district administration and acquiring bodies
4. Standardization of SIA report format and preparation of broad Terms of References (ToRs) in major sectors
5. Preparation of manuals for acquisition proceedings and R&R activities
6. Freeze on land transactions at the time of issue of notification u/s 4 of The RFCTLARR Act, 2013
7. Organize financial counselling camps for recipients of monetary compensation
8. Training for skill development in line with available prospects in local markets
9. Dwelling units for displaced families in joint name of husband-wife
10. Create policy and regulatory framework for land pooling and leasing
11. DoLR may provide support for research and documentation to generate learning about the experience of implementation

