

**Legal and Policy Review of Land Acquisition: It's Relation to
Land Use, Land Transfer, Land Preservation and R&R in the
State of Himachal Pradesh**

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1. Introduction:

Strengthening and transforming institutions for management of land acquisition and resettlement and rehabilitation was the prime objective of NLTA HP programme. In order to achieve this it was imperative to have a holistic well rounded view of existing land laws as well as the policy framework in the state. A comprehensive analytical study of the existing legal and policy framework for land in the state was therefore carried out. Land laws² related to its use, transfer, preservation, development, tenancy, reforms, revenue, ceiling, consolidation, control, common land and utilization of land and law and policy related to resettlement and rehabilitation in the state were analysed and inter linkages were understood. The paper examines the variety of land laws and its implications on land acquisition as well as the national, state as well as project specific policies of resettlement and rehabilitation to set the premise on which the myriad of land laws exist in the state and the implications of their acquisition is well understood.

To have a clear perspective of the land laws in the state, they can be broadly classified in to following categories

1. Laws made for the proper administration and management of land³
2. Laws for the preservation, enhancing productivity and development of land⁴
3. Laws made to bring in social changes and changes in the ownership quantum and pattern of the land⁵
4. Land Acquisition Law and allied acquisition laws⁶.

¹ The author wishes to acknowledge the assistance of Ms. Archana Vaidya, Independent Legal Consultant for this technical note.

² For a detailed list of laws analysed please let us know

³ E.g. H.P. Land Revenue Act 1954, H.P Transfer of Land (Regulation) Act 1968, H.P. Utilisation of Lands Act 1973, H.P Common Lands vesting and Utilisation Act 1974, H.P. Roadside Land control Act, 1968

⁴ E.g. H.P Land Preservation Act 1978, H.P. Land Development Act 1973, H.P. Holdings (Consolidation and Prevention of Fragmentation) Act 1971

⁵ E.g. H.P. Ceiling on Land Holding Act, 1972, H.P. Tenancy and land Reforms Act, 1972, H.P. Slum Area Improvement and Clearance act, 1979, H.P Bhoodan Yagna Act 1977

⁶ E.g. Land Acquisition Act as applicable in H.P and all other Allied acquisition Acts which have provisions of land acquisition in them as an allied provision to serve the main objective of that special Act. H.P. requisitioning and acquisition of Immovable property Act, 1972, H.P Town and Country planning act, 1977, H.P Panchayati Raj and Municipal Acts.

2. Laws made for the proper administration and management of land

Laws made for this objective are regulatory in nature. **Land Revenue Act** primarily provides for relationship between the landlords and the state and preparation of record of rights which are documents prepared by the revenue officers regarding the ownership and possession of land. Presumption of correctness is attached to the record of rights unless contrary is proved. This Act deals with the hierarchy of the revenue establishment in the state, their functions, powers and duties and also the detailed procedures to carry out their functions and powers.

3. Inter linkages of Land Revenue and Land Acquisition Act

This is one of the most important legislation from the point of land acquisition as the records of rights prepared under this Act are the only legal document to know the interested persons who can claim compensation in lieu of the compulsory acquisition of their land for public purpose under land acquisition Act. Therefore, any person claiming to be interested in such land would have to produce a true certified copy of the record of rights to prove the fact of their status vis-à-vis the land. In case there are more than one person shown to be the owners in the said records of rights but one of the said owners claim to be the sole owner then either a court decree to that effect or if a partition has taken place among the said co-owners then a deed of surrender by all other co-owners along with the deed of partition has to be submitted by the alleged sole owner to prove his claim.

The record of rights assume paramount importance whenever any land is to be acquired, because of the them being the only official documentary evidence of the relationship of any person with the land in question. As has been mentioned earlier there is a presumption as to the correctness of such records unless contrary is proved to be correct by the person who alleges otherwise. It becomes absolutely important for such records to be true reflection of the ground reality. For any person to be able to be recognized in the eyes of law as a co-owner, tenant mortgagee in possession etc. his name as such should have been recorded in the record of rights. If the revenue records in the state are maintained and updated regularly then for compulsory land acquisition to know the persons interested for claiming compensation would not be a problem. However in reality the revenue records never reflect the true picture as to the ownership pattern of the land they are never updated on time.

The central Land Acquisition Amendment Bill, 1998 envisages that land records are to be updated after issuing the intention notification under the land acquisition 1894 Act. This is definitely a very progressive and realistic amendment as it would sort out and resolve the issue of persons who are interested in the said land at the very outset of acquisition proceedings.

H.P Transfer of Land (Regulation) Act 1968 was made to regulate the transfer of land in the state of H.P. in the interest of persons belonging to scheduled tribes and mandates that no such transfer shall be made in favour of a non Schedule tribe (ST)

person unless a permission in this regard has been taken by the collector of the district in which the land is situated. Even the right, title or interest held by persons belonging to ST in land shall not be liable to be attached or sold in execution of a decree or order if the same is held by a non ST. This Act has a welfare function also as the objective is to guard the interests of socially and economically backward tribal people.

Any other transfer of land is regulated by **H.P. Tenancy and land Reforms Act, 1972** which generally bans transfers of any agricultural land to a non agriculturist in the state except with the permission of the state government. The permission if granted also contains the purpose for which such exemption is granted. However, such a person continues to be a non -agriculturist for the purpose of the this Act and such a person is required to put the land so bought to the use for which it was bought within a period of 2 years or within such period as the state government may have granted. If the land is not put to the intended use with in the above mentioned prescribed period then the same reverts back to the state government free of all encumbrances⁷.

There have been a lot of absentee landlords in the past who owned major chunks of land. Theses landowners used to take a big portion of the produce from the actual tillers who would only get a meager amount of benefit even after toiling there for the entire year. They were the poor hapless tenants who did not even have security of their tenancy rights and tenure. TLRA is essentially to regulate the tenancy of land and to give certain rights to the tenants under the reform aspect of the Act. In this Act there is a specific provision whereby the tenants are precluded from surrendering their tenancy in favour of the land owner even when he is doing this out of his free will to ensure that the landowners do not coerce the tenants in doing so and thereby defeating the very purpose of the Act.

4. Acquisition of land under TLRA does not have an element of compulsion

The acquisitions of lands are also done under this Act but they are of a very different genre as there is no element of compulsion in them⁸. The landlords want to sell the land and the state government is willing to acquire the same for a certain reasonable amount of money, which is also acceptable to the landlord. The land thus acquired by the government is then distributed among the needy people in a certain order of preference, which is mentioned in the TLRA on payment of some nominal amount of money.

The purpose of **H.P. Utilisation of Lands Act 1973** is to provide for a legal framework for utilization of land in the state of HP. The utilisation of land is required in the larger public interest so that the needs of the ever increasing population can be met. If some agricultural land is getting wasted and is not being put to any productive use and there are enough people to till the land then the same should not be allowed to

⁷ Section 118 of H.P. Tenancy and land Reforms Act

⁸ See section 119 of H.P. Tenancy and land Reforms Act, 1972

go waste. Any short term disuse of the above mentioned land is taken care by the provisions of this Act; however such land can not be taken for more than a period of 20 years and has to be returned to the rightful owner's thereafter.

Himachal Pradesh Road Side Land Control Act 1968 (HPRSLCA) was made to prevent haphazard and sub-standard development along scheduled roads and in controlled areas in the state of HP. The government or any other authority's power to acquire land in the controlled area however shall not be affected or prejudiced because of the operation of the provisions of this Act in the same area.

The objective of **H.P Common Lands vesting and Utilisation Act 1974** was to make provisions for vesting of village common lands in the State of HP so that it can be utilized properly and put to best possible use.

5. Laws for the preservation, enhancing productivity and development of land

Himachal Pradesh land Preservation Act 1978 (HPLPA) was enacted to enable the government to better preserve and protect certain portions of the territory of the state of HP. The state government ⁹is empowered under this Act to notify any area by publishing the name of the area in the official gazette which according to it requires preservation of the subsoil water of the area or prevention of erosion which the areas are either subject to or are likely to become subject to. The above mentioned areas after publication of notification are called notified area for the purpose of application of this Act. The government can regulate certain specified activities in these areas to achieve the objective of this Act.

Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (HPHCPFA) was made with an objective of consolidating the agricultural holdings which were reducing to non viable agricultural units as a result of repeated partitions or transactions and thus affecting the productivity of the state. This legislative initiative also addressed the issue of assigning or reserving some land for the common purpose of the village which means any purpose which serves common needs, convenience or benefit of the village. Consolidation means the redistribution of lands in any area between the several tenure holders entitled thereto in such a way so that for the time being the area is held in a more compact manner. Nothing contained in the revenue Act or the tenancy and land reform Act shall have any bearing on the validity of the transfer of rights of the land owners and the tenants in the holdings and the tenancies respectively carried out in view of the consolidation scheme. Neither the landowners nor the tenants shall be allowed to object to or interfere with the consolidation scheme on the ground of their respective rights getting transferred to the new holding. When a notification is published that a scheme of consolidation is to be made for a particular estate or estates or any part thereof, and the consolidation proceedings are in progress, no landowner or tenant

⁹ Section 3 of Himachal Pradesh land Preservation Act 1978 (HPLPA)

shall transfer or otherwise deal with any portion of his original holding or tenancy in which any other person now has interest because of the consolidation scheme.

6. Acquisition laws when compulsorily acquiring land and court decrees for sale can not leave a non viable fragment

This Act specifically mentions that the acquisition done under LAA should not result in creation of any fragment of land and if it happens then the government shall acquire that as well and the first offer in relation to such land is given to the owners of the contiguous survey number or the owners of the recorded subdivision of the survey number. The state government or the local authority while acquiring land under LAA cannot leave a fragment of land behind. Even any sale which takes place under the orders of the court shall be illegal if the same results in leaving a fragment of land. If the state government or the local authority does not require the excess land which it had to acquire to avoid leaving a fragment of land then such excess fragment shall be offered to the owners of the contiguous survey number or a recognized sub-division of survey numbers. The price quoted to such persons would be the same as the said government/local authority would have paid when it acquired the same¹⁰.

The acquisition proceedings under LAA are not kept out of the purview of the Act thereby ensuring that there is no fragmentation of land below viable limit even because of any govt. action.

The purpose and objective of **Himachal Pradesh Land Development Act, 1973 (HPLDA)** was to provide for the preparation and execution of land development schemes, the reclamation of the wasteland and the control of private forests and grass lands in the state of HP. The government is entitled to take temporary possession of the wasteland for the reclamation of the same and the possession is given back to the owner either on the completion of the scheme or in any case after an expiry of ten years from the date of taking of the possession. There is no bar for the government to acquire any land for public purpose irrespective of the fact whether any developmental scheme is in operation or not. After reading this enactment one would come to an inference that even if there is some developmental activity being carried out under a scheme made under the HPLDA acquisition of that land can be done by the government as per LAA.

7. Laws made to bring in social changes and changes in the ownership quantum and pattern of the land

H.P. Ceiling on land Holding Act, 1972 was made to consolidate and amend the laws relating to ceiling on land holdings in the state of H.P. Article 39(b) (c) of the constitution of India contain some principles which put an obligation on the state to direct its policy towards securing the distribution of ownership and control of the

¹⁰ Section 13

material resources of the community so as to sub serve the common good and also to ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. This Act was made to create a social system wherein the land resource did not concentrate in the hands of one person. The excess land so taken from the big land holders were distributed to the land less as per the schemes made in this regard by the government. The land ceiling laws specifically exempts the quantum of land owned by the state or the central government from the provisions of this Act. This exemption is nothing but a natural corollary to the principle of eminent domain, according to which all land is sovereign property. Surplus land which vests in the govt. as per the provisions of this Act is considered to have been acquired by the state for public purpose.

H.P Tenancy and Land Reforms Act, 1972 (TLRA) was passed with the objective of amending and consolidating the laws relating to tenancies of agricultural lands, and also to provide for a certain measure of land reform in the state of H.P. There have been a lot of absentee landlords in the past who owned major chunks of land. Theses landowners used to take a big portion of the produce from the actual tillers who would only get a meager amount of benefit even after toiling there for the entire year. They were the poor hapless tenants who did not even have security of their tenancy rights and tenure. TLRA is essentially to regulate the tenancy of land and to give certain rights to the tenants under the reform aspect of the Act. In this Act there is a specific provision whereby the tenants are precluded¹¹ from surrendering their tenancy in favour of the landowner even when he is doing this out of his free will to ensure that the landowners do not coerce the tenants in doing so and thereby defeating the very purpose of the Act.

Bhoodan yagna was a movement initiated by Acharya Vinoba Bhave to encourage and motivate people to donate land to landless people. **Himachal Pradesh Bhoodan Yagna Act 1977 (HPBYA)** was enacted to facilitate the activities related to bhoodan yagna and to constitute the bhoodan yagna board and further distribution of the said land to either the landless persons or to use the said land for community purposes. This Act also regulates the donation of land by any person to such board.

After careful perusal of the Act, there is nothing in it which specifically bars the state government from acquiring land which has been donated to the bhoodan yagna board and is owned by them. Bhoodan yagna board is a body corporate having perpetual succession and a common seal with power to acquire and dispose off property both movable and immovable. ¹² Power of the government to acquire land under LAA is not fettered by any restrictions. The relevant provision of the LAA mentions that whenever it appears to the appropriate government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect is published in the official gazette. Then any person who is interested in any

¹¹ section 31 of TLRA read with rule 12 HP Tenancy and Land Reforms Rules, 1975

¹² Section 3(2) of HPBYA

land which has been notified as mentioned above with in 30 days of the publication of such notification can raise objections to such intended acquisition of land.

The definition of person has not been mentioned in the LAA and therefore the word person would be attributed the same meaning as mentioned in the general clauses Act applicable in the state of HP. The relevant provision of H.P. General Clauses Act says that a person shall include any company or association or body of individuals whether incorporated or not¹³. This means that bhoodan yagna board shall be covered by the ambit of the word person occurring in the LAA. The LAA defines an interested person as any person claiming an interest in compensation to be made on account of acquisition of land under this Act. Therefore by this logic even the land which is vested in the bhoodan yagna board can be acquired by the government for the purposes mentioned in the LAA.

The **Himachal Pradesh Slum Areas (Improvement and Clearance) Act, 1979** was enacted for the improvement and clearance of the slum areas and for the protection of tenants in slum areas from eviction. The Act provides for acquisition of land required for redevelopment of clearance¹⁴ area or for execution any work of improvement in slum area¹⁵. The act has its own mechanism for acquisition of land and for determination of compensation. The provisions of LAA come into focus at the time of dispute on apportionment of amount determined among the interested persons and for determination of the title of the persons who are entitled to receive the compensation/ amount. In this act the land is automatically transferred to the state government on the publication of notice acquiring the land as before the publication of notice a preliminary fact finding exercise is conducted by the competent authority by issuance of a show cause notice to the owner of the land or to any person interested in the land. In some measure this is a faster method of acquiring land as any grievance related to the factum of acquiring land is addressed at a preliminary stage.

8. Land Acquisition Law and Allied Acquisition Laws

The state of Himachal Pradesh seems to have adopted Land Acquisition Act enactment with very minor changes. The substantive part of the enactment is more or less the same as the central Act however some amendments would have substantive implications in the process that is to be followed in the LA. The power to correct award based on clerical errors or arithmetical errors which is often seen as a dilatory tactic for awarding compensation is a progressive amendment. Similarly changes in the compensation procedures to include state as a party or protection of compensation from being attached, compensation to be paid in kind are way forward in reducing conflicts around compensation.

¹³ See section 2(35) of HP General Clauses Act

¹⁴ Section 2(b) means the area notified under section 10 of the Act

¹⁵ Section 2(h) means any area declared as such under section 3 of this Act

8.1. Compulsory acquisition of large tracts deny the owners an opportunity to sell their lands most profitably without compensating them

There is one very important aspect of compulsory land acquisition, which has not received any attention even in the court of law while compensation is computed for compulsory acquisition of large tracts of land. While acquiring large portions of land one has to keep in mind the fact that since it is a compulsory acquisition the seller does not have any option to not to sell.

It has been recognized umpteen numbers of times that the price for a smaller plot is always higher than the large plot. There is no bar in law to have small plot sale deed as an example for acquiring large portions of land especially when there is no other relevant or material evidence available. However such exemplars can be used after making adequate discount.

In the acquisition of large plots the acquiring authority is precisely denying the owner that opportunity to sell off his land the most beneficial way i.e. by dividing them into small viable plots. Normally there is a demand for small plots in the market as there are always very few buyers in the market to buy large portions except companies/society/any undertaking or government.

After denying the owner this opportunity the developmental charges are also deducted from the market value of the land which is payable to such an owner. The courts are always preoccupied with the quantum of developmental charges and never have a sympathetic view towards the owner. This concept of development charge sounds like a tax on the owner for having owned the land within the permissible limits as per the law of the land which the government selected to be acquired for public purpose. Why the owner should be asked to pay the development charges and the same is deducted from the market value. Does this kind of element exist in any voluntary sale agreement? Moreover if the demography of land requires a lot of development that would in any case be visible in the market value as the same would get affected to that extent.

8.2. Benefit of appreciation in land value due to change of use of land after acquisition is not transferred to the erstwhile owners

Another aspect which has not had sufficient consideration is the fact that use of land after acquisition should also be factored in to while the compensation amount is determined. All landowners in the vicinity would be able to avail of the benefit of such resulting appreciation except the person whose land has been acquired for a public purpose. This seems like a price which that hapless person is made to pay or the collective good or public purpose. The courts of the land have not given any progressive rulings in this regard which could be due to categorical provisions in the land acquisition Act as to what are the matters which need to be considered or not considered while computing the amount of compensation to be paid in lieu of

acquisition. The closest the courts have come is¹⁶ where it was held that the purpose of acquisition, relevancy of purpose for which the acquisition is made is also a relevant factor for determining the market value and must be taken in to consideration. The courts do talk about the capitalization method or its potential value but this has never been taken in to account at least when the collector makes an award.¹⁷

The proposed amendment Bill 2007 however has a provision in this regard where land use after acquisition would be a factor to be taken in to consideration while computing the quantum of compensation.

After a careful perusal of description of acquisition process and computation of compensation procedure under different allied laws one thing comes out very clearly that essentially allied Acts such as **HP Housing and Urban Development Authority Act, Himachal Pradesh Town and Country Planning Act** have a provision to attempt and have a negotiated acquisition of land by mutual agreement. In case the requisite land can not be acquired by mutual agreement there is provision that the concerned authorities can ask the state governments to make acquisitions for them under LAA. It has been seen that mutual agreement mode is not used as much as it should have been and in most cases the land is finally acquired under LAA by the state government.

In case of allied Acts which have their own procedure i.e. Tenancy and Land Reforms Act, Himachal Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act and Himachal Pradesh Slum Areas (Improvement and Clearance) Act for acquisition and computation of compensation, the purpose of acquisition is very specific and limited and the methods mentioned in them are evolved keeping in mind the objective of these Acts only.

9. Public purpose only determinant for compulsory land acquisition

Compulsory land acquisition by the state is determined only by the needs of public purpose which has been given paramount importance and several other aspects have made subservient there to. As was discussed earlier that the land owned by Bhoodan Yagna Board or any land where any developmental scheme is being implemented or where consolidation scheme has been executed or the land falls in the controlled area if the same is required for a public purpose the acquisition is carried out.

Public purpose has been defined in the land acquisition Act and is also being given a very wide meaning by the recent judicial pronouncements¹⁸. It is government's sole and absolute discretion to decide the concept of public purpose as it is bound to vary with times and varying conditions in the community and locality. Concept of eminent domain has also been explored several times and it is based upon the fundamental

¹⁶ Viluben Jhalejar Contractor V. State of Gujarat 2005 AIR (SC) 2214

¹⁷ Please refer to the field notes of SC

¹⁸ Kindly see the thematic paper on compensation methods

principle that the interest and claim of whole community is always superior to an individual. Definition of public purpose is an inclusive one and is not an exhaustive one.

9.1. Compulsory land acquisition independent of land use, land transfer, land preservation and R&R

The fact that the land use would have to be changed if the said land is acquired for a public purpose is no impediment for acquisition and infact of no consequence from the standpoint of compulsory acquisition. Once it is established that a particular land is required for a public purpose the same is acquired and is utilized for that purpose irrespective of land use to which it was put earlier. Land use of the compulsorily acquired can be changed as per the objective of the public purpose. There is no enactment, which bars the change of land use once the same has been acquired under land acquisition act for public purpose. The only land which cannot be compulsorily acquired even for public purpose is forest land. Forest conservation Act and Supreme Court order in the ongoing Godavarman matter mandates and lays down that forest land can not be used for any non forest activity without the prior permission of the central government and the centrally empowered committee constituted by the SC.

The land which is compulsorily acquired by the government vests in it free from all encumbrances once the award is made by the collector and the government takes the possession of the said land¹⁹.

It would be relevant to mention here that if any land that belongs to a particular department and is needed for a public purpose by another department then the interdepartmental land transfer is not covered by compulsory acquisition laws as the same are regulated as per the standing orders in this regard²⁰. Similarly the transfer of land between the state and central government are also regulated by the same standing orders.

The land acquisition Act does not deal with the resultant displacement it might cause to people dependent upon the said land for their subsistence. This Act only compensates persons who are intersected in such land as per the revenue records of the state for the loss of their land. The Act is silent on the plight of people who though might not be interested in legal parlance in the said land but are completely dependent upon it for their livelihood. The proposed central Land Acquisition Amendment Bill, 1998 apart from many other amendments²¹ envisaged to bring provisions related to R&R (Resettlement and Rehabilitation) on the statute book.

The Proposed central Land Acquisition Amendment Bill 2007 also envisages a very progressive amendment which factors in conversion of and to intended category of

¹⁹ Section 16 of the Land Acquisition Act as applicable in the state of HP

²⁰ SO 28 Punjab Land Administration Manual

²¹ See thematic paper on land acquisition for details

use i.e. the intended land use after compulsory acquisition while fixing the price of land for computing compensation to be awarded to the affected persons.

If these proposed amendments can be incorporated to the central legislation the state can also take a cue and adopt them. This would definitely at least to some extent obviate the plight of displaced people and ensure better compensation for the affected persons. The affected people would have a legal right to resettlement and rehabilitation which as of today they do not have.

9.2. Compulsory land acquisition laws should not render any person land less and should not acquire productive agricultural land

Compulsory land acquisitions laws also need to take special care that no body should be rendered land less as a result of acquisition, especially persons who are dependent upon that land for a living or who till that land themselves. However if it is unavoidable and the public purpose or the collective good has to be given effect to then such a person should be given land of the same quality somewhere close to his original holding to ensure that his livelihood pattern and security is not changed and he is not made a scapegoat for the collective good of a society. In case alternate land can't be provided compulsory acquisition should be not allowed.

Another important feature which need inclusion in the compulsory land acquisition laws are that productive agricultural land should not be allowed to be acquired in the normal course of circumstances. Again if the collective good is of such a nature that the land has to be acquired then the persons interested in that land should be given alternate land to carry on earning their livelihood. The process which needs to be followed for compulsory acquisition of productive agricultural land should be more stringent and fool proof. The computation of compensation in such cases should be on actual basis i.e. the affected person has to be either provided with the same quality of land in the vicinity or has to be so rehabilitated as not to lower his erstwhile annual income. This is a mandate of the national resettlement and rehabilitation policy also but since it is only a policy there is no legal recourse available to an aggrieved person. If this concern is articulated in the acquisition Act itself then the genuine livelihood concerns of the farmers can be taken care of to some extent.

9.3. Compulsory land acquisition need to balance the public purpose and objectives of other special legislations related to land

During the course of our legal analysis we have come across much legislation which has very specific purpose. The definition of public purpose and its interpretation by the Supreme Court have not shown any consideration to ensure that compulsory acquisition of land for public purpose should not result in defeating the very purpose of these special legislations. Following are a few examples

- The Land Consolidation Act aims at ensuring that the land holdings do not become extremely small affecting the viability and productivity of the land. This Act therefore makes schemes to consolidate the fragments of holdings owned by a

person. After consolidation the productivity of the land concerned is likely to go up because the person concerned would have one large piece of land in place of smaller pieces scattered over a large area to till. In a normal course such a consolidation scheme is made for a productive area²² so that the consolidation can have some visible effect on the productivity.

If in a particular area a consolidation scheme has been implemented and the persons concerned have got new holdings, whether the same can be acquired under LAA or not is something which needs through debate. Apparently there is nothing to stop the government from doing so but if one gets into the objective of the consolidation then one realizes that the government should in normal circumstances desist from acquiring such a productive land unless there is some grave emergency and the alternative land would not serve the purpose. The grave emergency should be made a part of the declaration to acquire such land and without such recital being there the declaration should be invalid.

- In Land Ceiling Act the quantum of land which a person can legally hold as an owner has been fixed. If a just and fair view of a situation is taken then a provision should be there in the ceiling Act that if a person holds land within permissible limit and the same is required by the government for a public purpose then state should be able to only acquire a certain fixed percentage of that person's total land holding. This becomes all the more important in cases where the person concerned himself tills the land. In exceptional circumstances if there is no option available to the state but to acquire all of such land then the person concerned should be compensated in terms of equivalent land somewhere else to make sure that only one person should not have to pay the price for the collective good of the community at large. If the ceiling law can be incorporated in to the LAA proceedings in the manner as explained above the hardships of people can be mitigated to a certain extent and land acquisition would not create landless people.
- Land owned by the Bhoodan Yagna Board constituted under Himachal Pradesh Bhoodan Yagna Act 1977 (HPBYA) as explained above can also be acquired for public purpose. This obviously frustrates the objective for which the land is given to this Board.

After the above discussion it can be safely said that the land acquisition law as applicable in the state has many inadequacies and does not address many valid issues. Public purpose as per the land acquisition law is the supreme factor to determine the need for compulsory acquisition and even the objectives of special land legislations which also serve a public purpose are subservient to it. The computation of compensation is not done in a very comprehensive manner and many principles which have been recognized by the Supreme Court e.g. potentiality of the land or the purpose for which land is used after acquisition are not considered at the time of making of award by the collector. This leads to unrealistic award and encourages litigation. R&R issues are not addressed by the acquisition laws at all.

²² It is implied keeping in mind the objective of the Act. What purpose would be served by consolidating banjar land?

10. Resettlement & Rehabilitation: Introduction and Scope

Resettlement and Rehabilitation (R&R) is of crucial importance in the wake of involuntary displacement of people. Compulsory acquisition of land for public purpose including infrastructure projects displaces people, forcing them to give up their homes, land, assets, resource base and means of livelihood apart from having to undergo associated psychological and socio-cultural consequences. The government does recognize the need to minimize large scale displacement of people but when it is imperative for the overall development of the community/state/country, involuntary displacement is inevitable and in such cases it needs to be dealt with utmost care and caution. It is very crucial to have a good R&R package to ensure that the affected people, whose lands have been compulsorily acquired, are not the ones who have to pay a price for development which has instead of improving their lives made them miserable.

As brought out earlier, The Land Acquisition Act (1894) still is the basis for land acquisition for various purposes, over the past few decades' pressure from civil society and changes in the government and other institutional policies have led to a number of institutions and governments evolving R & R policies and processes. The Government of India has brought out a revised R&R Policy (2007) and has recently been attempting to introduce certain amendments to LA Act and also for the first time introduced a bill on R & R. The National Resettlement and Rehabilitation Policy (NRRP), first formulated by Government of India (GoI) in 2003 (and made effective in February 2004) have been under revision since 2006. The Government of India's new NRRP 2007 was approved by the Cabinet on 11 October, 2007, and represents a significant milestone in the development of a systematic approach to address resettlement policy issues in the country.

10.1. R&R: Its significance vis-a-vis land acquisition

In the wake of compulsory acquisition for public purpose, the difficulties are more acute for the persons who are critically dependent upon the acquired land/assets for their subsistence/livelihood, such as landless agricultural workers, non-agricultural laborer, forest dwellers, tenants and artisans. Their distress and destitution is more severe and yet are not eligible for cash compensation under Land Acquisition Act (LAA) like the title holders of the said lands are. When any land is compulsorily acquired for a public purpose under the provisions of LAA the titleholders and the persons whose interests in such land are legally recognized are the only ones who get the compensation. LAA does not have anything to do with people who are not interested persons²³ as per the definition of the LAA irrespective of the fact that such people were critically dependent upon the land so acquired for their very sustenance.

10.2. Land Acquisition Act and R&R: Its interlinkages

We as a nation are very far from a state when resettlement and rehabilitation (R&R) to people who have to face involuntary displacement in the wake of compulsory

²³ See section 3(b) of LAA

acquisition would be a legally recognized right. When R&R can be asked for, as a matter of right and could be enforced in the court of law. Ideally R&R should be offered before the actual displacement and in fact till the time it is mandatory to have an R&R package acceptable to the affected people before actual dispossession of such people takes place, the situation is not likely to improve.

The basic law at the central government level, which has been providing some succor in the form of compensation to the displaced people, is the LAA, whereby the government is empowered to acquire any land for a public purpose and pay cash compensation. This compensation payment does not even qualify to be called an R&R measure if seen in strict legal terms because here we are compensating persons for having acquired their private property compulsorily. Moreover the scope of affected people or in other words interested persons who can claim compensation in lieu of the acquired land as recognized by the LAA is also very limited. The provisions of LAA do not envisage compensating people who don't have any legal title or legal right in the said acquired lands. This leaves a sizable chunk of people as mentioned above such as the landless agricultural workers, non agricultural labourer, forest dwellers, tenants and artisans, who are the worst affected ones but can't be considered interested people to lay claim for compensation in want of any legal right on the acquired lands.

It is amply clear that the LAA therefore does not deal with the problem of affected people getting compensated in real terms as it only compensates people having a legally recognized title or right. Therefore the R&R aspect as a result of any compulsory land acquisition is not dealt within the framework of LAA.

10.3. R&R: The National Policy Framework

At present, the only instance where R&R is statutorily required is as a part of environment clearance process²⁴. The R&R package for the Project Affected Families (PAFs) is also assessed and approved by the expert appraisal committee (EAC) of the ministry of environment and Forest (MOEF) along with Environment Impact assessment (EIA) and Environment Management Programme (EMP) reports. Some of the salient features of this process are condensed in form of a Box-I.

²⁴ EIA notification 2006

Box-I: Environment Impact assessment Notification 2006

As per the MOEF's revised EIA Notification, 2006, the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained through Public Consultation. For the purpose, a Public Hearing is conducted at the Project site(s) or in its close proximity, District wise, through the concerned State Pollution Control Board.

The notice of Public Hearing is advertised in one major National daily and one Regional vernacular daily, with a minimum notice period of 30 days, for furnishing the response of Public. One hard copy and one soft copy of the EIA report and its Executive Summary are also forwarded to authorities namely District Magistrate/s, Zila Parishad or Municipal Corporation, District Industries Office and Regional Office of MOEF. The advertisement/notice for Public Hearing informs the public about these places or offices where the public could access the EIA report and its Executive Summary, before the Public Hearing.

For obtaining responses in writing, MOEF and the concerned State Pollution Control Board also invite responses from concerned persons by placing on their website the summary of EIA report. The public hearing report of a project forms the part of environmental clearance proposal that is submitted to MOEF along with EIA and EMP reports.

It is clear from the above discussion that there was a big gap in law and policy arena in R&R in the country. The state and as well as the central government had an ad-hoc approach to deal with issue of R&R in wake of involuntary displacement caused due to acquisition for public purpose. To fill this gap the government of India for the first time in 2003 came out with a policy document titled National Policy for Resettlement and Rehabilitation of project affected families (NPRR-2003). As it was a policy document it had only a persuasive value thus not enforceable. However, in absence of any legal framework on R&R it does act as a guiding principle for formulating R&R.

NPRR 2003 though was a good start but it does not address the problem comprehensively. There was a need to review the NPRR 2003 primarily because any R&R policy needs to take social and demographic impact in to account. The policy has to be made more sensitive to the needs of the tribal and the most vulnerable section of the affected people. The scope of the policy in its application needed to be enlarged.

National Rehabilitation Policy (NRP) 2006 is an attempt to rectify the shortcomings of the NPRR 2003 and is more comprehensive in terms of scope in applicability and benefits envisioned for the displaced people. The growing need to have a comprehensive policy on R&R has resulted in NRRP-2007. It aims at rectifying some issues, which have arisen in the process of implementation of various R&R schemes. A comparative analysis of NRRP-2007 and earlier NPRR-2003 is elucidated later in a tabular form.

10.4. Comparative Analysis of Major R&R Policies

A comparative analysis of the major R&R policies existing at the national level in terms of the entitlements has been undertaken and presented in a tabular form. (Table 1)

Table 1

Aspect	Orissa	Maharashtra	NHAI	NTPC
Definition of affected people	'Displaced person' - ordinarily residing in project area prior to notification and homestead land to be acquired.	'Affected person' - occupant whose land acquired, tenant in actual possession, agricultural laborer deprived of principal living, non occupant but working for gain in affected area	Title holders, residential, commercial, agricultural, community, vulnerable groups, businesses, encroachers, squatters, vendors, illegal users and other affected individuals all have been listed for specific benefits	Project Affected Person means a person and his family whose place of residence or other properties or source of livelihood are substantially affected by the process of acquisition of land for the project and who has been residing continuously for a period of not less than three years preceding the date of notification or practicing any trade, occupation or vocation continuously for 3 years...
Family Definition	Person, spouse, minor sons, unmarried daughters, parents & other dependants	Spouse, son or married daughter or brother		Family of a PAP consists of such persons, his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him and dependent on him/her for their livelihood.

Aspect	Orissa	Maharashtra	NHAI	NTPC
Separate family	Major son (married/unmarried), unmarried daughter/sister over 30 yrs, Physically / mentally challenged, minor orphan, widow / woman divorcee.	No such definition		
Identification of displaced	Socio economic survey within 2 months from Land Acquisition notice, public display of list of displaced at gram sabha, teshil/district Govt. offices. ID card to displaced.	No survey. Public advertisements about proposed land acquisition and a process of application by eligible persons for R & R.	Based on land acquired, property demolished, encroachments cleared, trees other assets affected, business affected and other losses.	Socio Economic survey and RAP by independent agency, revenue records, verification by gram sabhas, other departments and certified by District collector. Impact survey.
Land acquisition Process	Communication plan for awareness in area. Consultation of Gram sabha or panchayat. Sociocultural resource mapping & infrastructural survey by independent agency within 2 months. Negotiation or acquisition process and resettlement	Compensation amount according to a system of 5 slabs. Land for Land (irrigation projects only) at resettlement site at 65% of compensation received or value of new land whichever is lesser. 50% cash of the value of land offered if land offer is refused.	By district administration based on plan and schedule with system for valuation and compensation. Utilising services of independent agencies to monitor.	The Government of the state where the project is located will decide the process based on applicable laws and procedures. Land prices fixed on market value, those opting for land for land will not be eligible for rehabilitation grants.
Direct Purchase option	Direct purchase of land at negotiated price. If it fails other provisions apply	The collector or other authority has power under the Rehabilitation act to purchase, acquire or exchange land (compulsory)	Land acquired at market value and valuation of property. Additional compensation if replacement cost exceeds compensation received.	Land will be acquired through state government .Land for and will be preferred but this will depend on the RAP which will be custom made for the site.

Aspect	Orissa	Maharashtra	NHAI	NTPC
Unutilized land	To be resumed if not utilised within 'prescribed time limit'	No such provision except provision to change project design and land needed		
Resettlement site identification	In consultation with Gram sabha and displaced families	Public notice inviting objections to identified land or suggestions within 30 days.	Entire communities will not be displaced. Individual resettlement will be compensated at market cost and some additional services for facilitating livelihoods etc.	Those who have not opted for self-resettlement will be provided en masse resettlement. State government will either provide the land free or purchase it within certain cost limits
Civic amenities, infrastructure in resettlement sites	None specified. Existing public properties in origin site will be rebuilt in resettlement site. steps for development of cordial relationship in resettlement area.	Specific civic amenities listed: Water, sanitation roads, electricity, public buildings, cremation ground and other facilities listed.		Amenities will be provided as per needs and RAP in enmasse resettlement colonies and in places where groups of more than 25 - 30 affected families have decided to settle.
Resettlement period	No physical displacement before resettlement site completion certificate from collector	Notification of land acquisition alone can be 1 to 3 years. No time limits on Government for resettlement but once an offer is made, the affected person is given 45 days to accept.		
Raising standard of living in new site	"Ensure as far as practicable" Dovetailing normal development projects with R & R plan giving priority to displaced.	Class II & IV jobs at 5%		several specific measures like capacity building, education support, livelihood support, small family incentive, welfare activities etc will be implemented
Multiple displacement	50% additional ex gratia compensation			

Aspect	Orissa	Maharashtra	NHAI	NTPC
Rehabilitation Package	For Type C: water Resources / National Parks & Sanctuary	For all including Water resources, National Parks and Sanctuaries	For affected persons due to road project	
Homestead Land	0.10 acre in rehabilitation site or cash equivalent up to Rs 50,000 for families opting self relocation	some are eligible for House under Indira awaz Yojana or for agriculturists 370 sq mts land for families less than 5 members. Additional 180 sq meters for every 3 more members' upto ceiling of 740 sq mts. Half the land for non agriculturists.		200 sq mts in resettlement colonies. Rs 50,000 to Rs 100,000 for self-resettlement.
House Building assistance	Rs. 1, 50,000 for house including cattle shed to all including self relocated.	Rs. 10000		Fixed resettlement grant Rs. 30,000
Agricultural land -displaced ST families	2.5 acres irrigated -or 5 acres non irrigated agricultural land.			25% higher R & R Benefits
Agricultural land -Other categories :	2 acre irrigated or 4 acres non irrigated agricultural land	Based on a system of slabs for different categories.	Based on valuation and additional compensation if replacement cost is higher	Replacement of lost lands through land for land on willing buyer willing seller basis, land development cost @ 10000 per acre.
Non availability of land	cash equivalent of Rs 1, 00,000 per acre irrigated and 50,000 pa non irrigated land including reclamation cost or at rate decided by Govt. from time to time.			up to 1.3 times the original compensation for 5 acres for those who lost land. Others will be provided wage compensation for 500 to 1000 days at minimum wage.

Aspect	Orissa	Maharashtra	NHAI	NTPC
Registration cost	For displaced families receiving cash equivalent to the extent of 2.5 acres. / 5 acres non irrigated land or 2/4 acres as eligible, to be paid by project within 5 years.			up to 1 acre stamp duty and registration cost will be provided to landless buying land with the help of resettlement grants.
Other assistance	Common to all Types			Different categories
Maintenance / other allowance	@ 2000/- per month for 1 year if timely vacation		Transitional allowance to different categories of Rs. 2000/- for 6 / 9 months,	Resettlement grant 500 to 100 days at minimum wage, monthly subsistence 20days per month up to 250 days a year at minimum wage
Temporary shed	Rs. 10,000 per family			Transit accommodation for emergency acquisition
Transportation Allowance	Free transportation or Rs. 2000/-		Rs. 500 to 2000 for different categories	Actual costs or lump sum of Rs 20,000/
Employment	Preference to displaced families for employment in project or through contractors.	5 % of available Class III & IV jobs in government, public sector, project beneficiary companies and cooperatives will be given to a list of nominees (one from each family).	Livelihood training @ Rs. 1000, lump sum grants Rs 500 to 2000 for different categories.	Capacity building and a range of employment and livelihood options will be provided from starting small business, buying own agricultural land, getting job in the project formation of PAP cooperatives with assured contracts and other options

Aspect	Orissa	Maharashtra	NHAI	NTPC
Special benefits to Indigenous /tribal groups	Respect for socio cultural norms'. Preferential allotment of land, 'as far as practicable' resettlement in compact area close to origin, 20% higher benefits if displaced outside district			Additional financial assistance of 500 days minimum wages loss of customary rights/usage of forest produce in case the acquisition has affected their rights. Resettlement closer to natural habitat. 25% higher benefits, fishing rights in project reservoir, reversal of land deals if tribal rights are found violated.

10.5. Gaps and Issues: Comparison between NPRR 2003 and NRRP 2007

Threshold for Social Impact Assessment (Section 4.1 and 6.1): If a new project involves displacement of four hundred or more families en masse in plains areas or two hundred or more families en masse in tribal or hilly areas, a Social Impact Assessment (SIA) study including a baseline survey and census will be carried out. The SIA will be subject to a public hearing, while the baseline survey and census data will be made public to enable objections and suggestions from the affected population.

Implications: It is problematic to define a threshold for when a SIA is required because:

- The SIA including the baseline survey and census is the instrument to determine the number of affected families and without a SIA there will be lack of clarity regarding the number of impacted families, and whether the threshold entitling to community facilities has been reached.
- Land acquisition impacts affect individual families who each require compensation and assistance, and some form of SIA involving a census of affected families along with an inventory of assets lost and other impacts is needed irrespective of the scale of land acquisition.
- The concept of en masse displacement focuses on entire communities and overlooks that, depending on their scale, linear projects can have severe impacts on a large number of families dispersed across many communities.

Linear projects - The new NRRP 2007 recognizes formal claims of affected people over land that will be 'acquired' including 'abadi' and 'other property' (Section 3.b (ii)). However, Section 7.19 which applies to linear projects (roads, railway lines etc.) stipulates that only those who have clear title to land - i.e. khatedars whose names are included in the revenue records as owners - will be eligible for asset compensation plus an ex-gratia grant. In addition, only khatedars would be entitled to other rehabilitation and resettlement benefits if, as a result of the land acquisition, their land is less than the recognized small and marginal holding.

Implications: Land provided under welfare schemes for the landless (e.g. Bhoodan land, Kesari Hind land in Rajasthan, UP, Bihar, Jharkhand, and un-demarcated forest land in HP) and the homeless (shelter under IAY, EWS schemes) to which people do not have formal rights - i.e. 'khatedar rights' - can not be legally acquired under the LA Act. The Government already holds the right over such land, and if it is required for a project, the government will transfer the land. The people dependent on such land are not eligible for compensation for lost assets and may get excluded from any R&R support. Moreover, they will no longer be eligible for any other welfare scheme, as they were beneficiaries of schemes prior to the project that deprived them of their land. Similarly, those who in search of livelihood have settled on government land and have no formal claim, will also not be considered 'eligible' for R&R support as such land can not be acquired under the LA Act, but is repossessed by the state.

Cut-off date for entitlements (Section 3.1(b)(iii)) - All displaced non-title holders (agricultural and non-agricultural laborers, artisans, small traders, and landless persons) will only be entitled to assistance if they have resided not less than three years prior to the date of declaration of the affected area.

Implications: Some of the poorest and most vulnerable may be excluded from assistance when displaced:

- While a cut-off is needed to determine eligibility for compensation and assistance, it may be difficult to determine who has actually stayed prior to the three year cut-off date since non-title holders, precisely because they are non-title holders, may not have the required documentation. The cut-off date could instead be defined as the date upon the declaration of the affected area when the SIA is undertaken.
- In situations where less than 400/200 families are displaced en masse, and a SIA is not required, the basis for clarification of claims by those affected would be weak because no attempt may have been made to document the duration of their residence in the affected area.

Benefit sharing (Section 6.23) - The NRRP 2007 recognizes the principle of long term benefit sharing with the affected people. However, the entitlement is only for those who were entitled to compensation for land and other assets, and is calculated on the basis of the compensation they have received for these assets (20 to 50% of the compensation amount as shares or debentures in the 'requiring body').

Implications: Both people who do not enjoy legally recognized rights over land (e.g. beneficiaries of welfare schemes for the landless or shelter schemes) and those affected by income losses alone (e.g. share croppers) will be excluded from receiving long-term benefits from the revenue generated by the project. This exclusion of the poorest and most vulnerable sections of an affected community is likely to generate conflicts within the community and create risks that the projects will not be realized and yield their intended benefits.

Urban Resettlement: Although the new NRRP applies to resettlement and rehabilitation in all sectors covering both rural and urban settings, its focus is rural contexts.

Implications: Although the text makes occasional references to urban situations (e.g. para 7.2 and 7.3 on urban replacement housing), its application to an urban environment will require careful consideration and application of the general policy provisions (e.g. assistance to rural tenants and squatters is described, but not urban, surveys and consultations refer to rural contexts, as does the outline of the content of a Rehabilitation and Resettlement Plan).

The following matrix is presented to have a clear perspective on the similarities and the dissimilarities between the NRRP 2003 and NRRP 2007 and where they stand vis-a-vis OP 4.12 of World Bank. (Table 1)

Table 1

Equivalence and Gaps between NRRP 2004, the new NRRP 2007, and World Bank's OP 4.12.

Sl. No.	Policy element	National Policy for Resettlement and Rehabilitation 2003	National Rehabilitation and Resettlement Policy 2007	Operational Policy 4.12	Remarks
1.	Applicability	The policy is triggered when 500 or more families in plain areas and 250 and more in hill regions are displaced en masse.-	It applies to all projects that lead to involuntary displacement. In addition, it is applicable to situations that may lead to permanent involuntary displacement such as natural calamities, irrespective of numbers. Only emergency acquisition by Ministry of Defence is exempted.	It applies to the project that involves involuntary taking of land, regardless of the number of persons displaced.	Complies with Bank's policy, but lacks requirements for impact assessments for displacement of less than 400 families en masse in plains or less than 200 families en masse in hill areas.
2.	Definition of Project Affected zone or area	Defines 'affected zone' as "an area that comes under submergence due to impounding of water in the reservoir of the project".(para 3.1 (b)). R&R assistance is provided to the affected persons of such zones.	Any area, village or locality, notified by the Government that involves involuntary displacement en masse of 400 families or more in plain areas or 200 families or more in tribal or hilly areas (para 3.1 c and 6.1) If the affected area that has less than the number of affected people prescribed under section 3.1 and 6.1, the people will be considered for R&R support and a resettlement site (Preamble & 7.22.2)	It applies to all types of project involving the taking of land, regardless of the number of persons displaced.	As per the 2007 policy, though it recognizes that all people affected by projects will be eligible for rehabilitation, specific guidelines are only laid down for situations where projects will lead to en masse displacement. If the numbers are below the threshold limits, the policy does not provide any specific approach to carry out an assessment of adverse impacts. Lack of clarity leaves room for interpretation by project proponents.
3.	Cut off date to establish eligibility criteria to receive R&R	The policy requires that the affected people should have been the resident in the project area for at least three years prior to the date of notification of the	The cut-off date for establishing eligibility for R&R assistance is either (I) for those who have title to property in the area, the date on which the project area is declared as	A cut-off date established by the borrower and acceptable to the Bank. (para 15 & 16) Usually it is the date on which census is carried	Adopting two sets of principles for establishing cut-off date is likely to create conflicts within the community. In addition, during implementation it may

Sl. No.	Policy element	National Policy for Resettlement and Rehabilitation 2003	National Rehabilitation and Resettlement Policy 2007	Operational Policy 4.12	Remarks
	assistance	project (para 3.1 (q))	required for a public purpose (para 6.1); or (ii) for those who do not have legal title to land (laborers, artisans, small traders, squatters) the requirement that they have been resident in the project area for at least three years prior to the date of notification of the project (para 3.1 (b, iii), 7.1 and 7.3)	out.	be difficult for non-title holders and others who may not possess any documents to prove their stay 3 years prior to the declaration of the affected area.
4.	Social Impact Assessment (SIA) and preparation of R&R Plan	Census survey and alternate resettlement sites to be included in the report	The policy requires a SIA and R&R Plan for projects involving 400 or more families displaced en masse in plain areas and for 200 or more families in tribal or hilly areas (Chapter VI)	An abbreviated RAP that includes census is required if the displaced are less than 200 persons. In this case socio economic survey is required if the loss of productive asset is more than 10% or involve any physical relocation. In all other cases a full RAP with complete social assessment is mandatory (para 25).	The policy does not provide guidelines to assess adverse impacts when projects will have impact on less than the prescribed thresholds - 400 families in plain areas and 200 families in tribal/hilly areas.
5.	Consultation	The draft resettlement scheme will be prepared in consultation with representatives of affected and panchayati raj institutions	Draft Resettlement plan including census prepared in consultation with project affected people. Draft Plan to be discussed in gram sabha meetings in rural areas, in public hearings in urban areas, and if STs are displaced in accordance with the Provisions of the Panchayats (Extension to the Scheduled Areas) Act of 1966.	Informed consultation through out the preparation of the project.	Complies with Bank's policy, but in the NRR 2007, the process of consultation appear more specific for rural areas that for urban areas.

Sl. No.	Policy element	National Policy for Resettlement and Rehabilitation 2003	National Rehabilitation and Resettlement Policy 2007 (6.15.1& 6.15.3)	Operational Policy 4.12	Remarks
6.	Time line for preparation R&R plan and disposition of property	The policy stipulates a time frame for carrying out SIA through a consultative process and provides opportunity to affected people to raise objections in case they have been excluded from the census survey. The census will be completed within 155 days from the date of notification of project affected zone. There is no clear stipulation on implementation of the plan	Provisions are similar to the ones laid down in 2003 policy. No one will be displaced till full compensation is paid and relocation is at advance stage.	Final draft resettlement action plan disclosed in project area and approved by the borrower before negotiations of the project.	Complies with Bank's policy
7.	Clearance	Not required	The R&R plan, to be reviewed by independent body and cleared by MoEF.	Cleared by borrower and Bank	Complies with Bank's policy
8.	Budget	Information of the cost of LA and R&R to be communicated to the project proponents	To be incorporated in the overall project cost benefit analysis	To be incorporated in the overall project cost	Complies with Bank's policy
9.	Housing benefits	Only provision for free housing plot for BPL families (para 6.2)	Free house plots for all owners in rural and urban areas. Those who are below BPL and do not own homestead land will receive free house plots in rural and urban areas. If house plots are not available in urban areas, the affected family will receive apartments in multi-storied buildings. Land can be purchased for resettlement.	All losses to be mitigated	Complies with Bank's policy
10.	Livelihood loss	Minimum stipulated	The provisions have been expanded to cover loss of livelihood in rural areas. However, there is no	All losses to be mitigated	The NRR 2007 does not address issues of loss of livelihood in urban areas.

Sl. No.	Policy element	National Policy for Resettlement and Rehabilitation 2003	National Rehabilitation and Resettlement Policy 2007	Operational Policy 4.12	Remarks
			provision for those who are dependent on commercial establishments in urban areas.		
10.	R. R. assistance under linear projects	Policy recognizes only affected khatedar and provides only Rs. 10,000 as ex-gratia for each khatedar and no other R&R support - para 7.1	The affected titleholder will receive ex-gratia (minimum Rs 20,000) over and above the compensation and other benefits under the Act, scheme and other programs. Those who become marginal or small land holders will receive all R&R benefits under this policy.	All types of losses to be mitigated	Policy does not recognize non-titleholders who are affected in large number by linear projects.

11. R&R in Himachal Pradesh: The Policy Framework

The State of HP does not have a state law or policy on R&R for the people who are involuntarily displaced as a result of compulsory land acquisition; however there is a national policy on R&R (NPRR) made by the Ministry of Rural development in the year 2003 and which is in force since February 2004 and now the latest NRRP-2007. This policy lays down the basic norms, R&R packages and the minimum benefits to be offered to the Project Affected Families (PAFs). The states, PSUs or the requiring body however can offer better benefits. Some states like Orissa, M.P., Maharashtra and central ministries/departments or organizations like NTPC, NHPC, NHAI, Coal India Ltd have their own Policies and guidelines for R&R

11.1. R&R Policies: Sectoral analysis in HP

A) Power Sector

The state of HP can boast of having 24% share of the total hydroelectric power generation potential of the country. The National Policy for Hydro Power development issued by the Government of India has a separate chapter on land acquisition and R&R for hydroelectric power generation. In case of mega projects the cost of land acquisition and R&R package is to be included in the overall cost of the project and the developer is entitled to pass it off to the consumer. The State Govt in such cases can set up separate authorities for the implementation of the R&R schemes but funds are to be provided by the developer of the project.²⁵There are

²⁵ See chapter 3.13 of National Policy for Hydro Power Development

many hydro electric power generation projects in the state of HP which have been or are being developed by NHPC (National Hydro Electric Power Corporation), NTPC (National Thermal Power Corporation), Satluj Jal Vidyut Nigam Limited (SJVNL). All these corporations have their own policy on R&R as an institution and draft a separate policy for R&R for each project after consulting the state government within the broad guidelines of their institutional policies. The land however for all these projects is acquired under the LAA by the state govt.

Satluj Jal Vidyut Nigam Limited (SJVNL) initiative on R&R

SJVNL has executed seven HE projects in the State of HP i.e. Nathpa Jhakri, Rampur, Luhri, Khab, Devsari, Naitwar Mori and Jakhal Sankri. The policies and features of

Salient features of the R&R policy formulated by SJVNL in consultation with the state govt for the PAFs of Nathpa Jhakri HE project. All these benefits are in addition to the benefits which the PAFs are entitled under the LAA.

- SJVNL developed agricultural land for the landless PAFs and ensured that all families have at least 5 bighas of agricultural land. Sub divisional magistrate of the area was appointed as R&R officer and was empowered to issue the land less certificate for the PAFs to become eligible to get land under the R&R scheme.
- Each landless PAF was given a fixed grant for housing or a house having plinth area of minimum 45 sqm at their discretion.
- Displaced shopkeepers were allotted plots for shops in the market developed in the rehabilitation site.
- The displaced shopkeepers were given preference in the allotment of the shops in the shopping complex at the project site.
- A member of PAF was given guaranteed employment subject however to the availability of vacancy and qualifications of the person concerned if the same family was not granted land, shop or plot for the shop.
- Apart from the benefits mentioned above a mobile health van was also made available for the PAFs of the area.
- Financial support was provided to PAFs for income generation activities such as poultry farm, milk dairies, taxis etc. a merit scholarship scheme for the PAFs was also initiated. The project authority also gave financial help to improve the infrastructural facilities the schools operating in the project affected area and encouraged afforestation. Compensation was also awarded to all those people whose houses had got adversely affected because of the blasting done in the area on the recommendation of an expert scientist of National Institute of Rock Mechanics and a geologist of the Government of HP. Some financial help was also extended to the Govt. of HP and the department of irrigation and public health for the restoration and augmentation of the existing water resources which were affected because of this project. All the panchayats in the project affected area were given generous financial help for infrastructural development.

SJVNL also got an impact assessment study for the implementation of the R&R package done by the Agro Economic Research Centre- HP University.

The main features of the R&R Package for Rampur HE project are following:

- The project authorities have undertaken to spend Rs 2.5 crores per annum on the infrastructure during the construction of the project and Rs 75 lakhs per annum after the construction of the project for community and infrastructural development activities in such villages.
- Financial aid for income generation schemes for PAFs.
- Merit scholarship scheme for the wards of the PAFs.
- Financial aid to schools of the project affected area for their infrastructural development.
- Technical education scheme for the youth of the project affected area.
- Bus stand and senior secondary school at Rampur to be constructed.
- Ensuring drinking water supply and aid for the restoration of the dried up water resources.
- Some bridges were also constructed in the area.
- Lot of awareness programmes for the community and area development was also conducted by the project authorities.

NHPC R&R Initiative

NHPC has developed Baira Siul, Chamera Stage I, and Chamera Stage II and is undertaking the projects at Parbati Stage II, Parbati Stage III, and Chamera Stage III. The R&R plan in an NHPC project is typically formulated in consultation with the state revenue department, local administration and the representatives of the local people. After the plan is formulated the same is forwarded to the state govt for its concurrence. The NPPR 2003 is the reference point for most of the NHPC R&R schemes vis a vis the benefits granted to the PAFs and the project affected area irrespective of the fact whether number of displaced families are less than what attracts the provisions of this policy.

PAFs also get benefited from Vocational trainings on animal husbandry, horticulture, and poultry development etc., imparted by the project as a part of R&R package, for entrepreneurial skill development, self reliance and self sustainability.

B) Road sector

Himachal Pradesh Road and other Infrastructure Development Corporation Limited (HPRIDC) its initiative on R&R

HPRIDC is a wholly owned Company of Government of Himachal Pradesh was incorporated on 10.06.1999 under the Companies Act, 1956, with the main objective of developing Roads, Bridges & other infrastructure in the State of Himachal Pradesh. HPRIDC is an apex organization in Himachal Pradesh engaged in fostering the growth of infrastructure development in the State. The operation manual of the HPRIDC has a special chapter on R&R to address the social issues in any development project undertaken by this company and was made keeping in mind the various requirements of external funding agencies. This operation manual has to be followed as per the agreement between the GOHP and the external funding agency in all the projects funded by them.

R&R of HPRIDC

HPRIDC has a detailed chapter on the principles and procedures to be followed by HPRIDC to address social issues in any development project undertaken by it under the heading of resettlement and land acquisition. The HPRIDC has prepared the entitlement matrix for World Bank Funded project.

R&R Principles, policy framework and entitlement matrix for world bank funded state roads project

There is an R&R Principles, policy framework and entitlement matrix for World Bank funded state roads project. This policy document describes the principles and approach to be followed in minimizing and mitigating negative social and economic impacts by the projects. The guidelines are prepared for addressing the issues limited to these projects for resettlement and rehabilitation of the project affected persons.

Concluding Remarks:

It is clear from the above that there are huge disconnects between the detailed legal mandates and the policy frameworks in the state. The more progressive provisions of entitlements are embedded in the softer instruments of policy which lacks a binding nature of the agreements. There is very little legal recourse available in case of violations of policy. The above note brings out the diversity and complexity of both the land related laws and their nature and implications on acquisition. It is clear that the different legal nature of land laws must be considered during acquisition process and the resources that are invested in enhancement of land value must be considered when such land uses are changed. Currently the legal framework does not address this complexity. Similarly, while detailed policy instruments exist on R&R the nature of engagement with the affected community must be binding and stronger legal instruments must be put in place to instill confidence in those who are at the receiving end of land acquisition.