

HEALTH LAWS IN INDIA: A LEGAL & JUDICIAL ANALYSIS

Prof.(Dr.) S.P. Mishra¹, Dr. Anjali Dixit² and Prof (Dr) Mrityunjai Pandey³.

Abstract: The Globalization has a lot of hurdles on the health prospects, with all this health sectors have various good opportunities with only few risks. Current hurdle in the health sector is work in a minimum benefits with maximum serve in this globalization. With the main object is to work for the benefits of the human being and protect their human rights, fundamental rights and all other rights.

All these are basically possible with the help of States organizations. With the positive cooperation of state, we can solve the hurdles. By enforcement of better health policies, effective legislations we can benefits societies. Health sector also deals with the proper protection of environment, by proper disposing of medical waste materials.

From Health education to Health services everything is under the control and supervision of Legislative frameworks in India. Positively, India becomes a rising health hub for the various countries due to its rich facilities and cheapest services.

Keywords: Health, Globalization, Hurdles, Supervision, Legislative frameworks

Introduction: India is a country of superrich health facilities. From Vedic era to modern era, Indian doctors are famous for their medical services. Homeopathy, Ayurveda, Yunani and Alopthy on every aspects Indian medical facilities are superb. There is no compare with other countries, regarding the health services. In the digital era, India again prove itself by using the high-tech medical facilities to cure all kinds of diseases with a minimum coast. Not only for medical facilities, India now become a great place for medical research.

‘Medi-tourism’ or ‘Medical tourism’ is a new profession trends arises in India within few two decades. In recent days India witnessed for the issuance of highest numbers of ‘Medical Visas’. Tele-medicine also a emerging sector

of healthcare in India.

Indian health care is now adopting ‘Artificial Intelligence’ to cure diseases. Tele health, Tele Medicines, Robotic-surgeries many more are the new dimensions in the Indian Health care systems generated in recent year.

Finance Minister also focuses health sector, and increases 20% more budget for health & medicines.

Healthcare Laws

Various laws have been made by Indian Government to protect the right to health of people. This right includes improvement of all aspect of environment; working conditions and industrial hygiene; prevention and control of occupational, epidemic and other diseases.

Every Law is framed with its unique objects some of them are as follows:-

1. MRTP Act¹ for the control abortion system in India;
2. Pharmacy Act² deals with the pharma Industries to pharma education & research
3. For welfare of mother and child there is maternity law³;

*Corresponding author

1 HOD of LAW, CSMU, Panvel, Navi Mumbai

2 Associate Professor, SLSG, Career Point University, Kota, Raj

3 St. Wilfred College of Law, Navi Mumbai, Panvel, Maharashtra

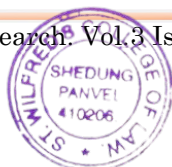
E-mail: sp31mishra@gmail.com

Published on Web 30/03/2023, www.ijsonline.org

¹ Medical Termination of Pregnancy Act, 1971

² The Pharmacy Act 1948

³ The Maternity Benefit Act, 1965



4. To avoid sex determination there is a law⁴
5. Adulterous food is also penalized by law⁵
6. Health services also comes under the ambit of Consumer laws⁶
7. Every organization and factories are strictly bound to provide medical facilities to their workers⁷
8. Environment also part of health care under the laws⁸
9. Human organs also protected by the laws⁹
10. Mental health care is protected by the laws¹⁰
11. Not only human being medicines are the part of health care system¹¹

Above are the only few, list is very big. Parliament to judiciary every institution in India is playing its role to protect Indian human being.

JUDICIARY ON HEALTH CARE

Physical health to mental healthcare, all is the part of the Indian health care system. Every Institution of Indian Government is responsible to take care of the Humanity by performing their duties honestly.

Indian Constitution is the watchdog to protect the health rights of Indian citizens in India. Various precedents are sets that Indian Constitution 's 'Right to life' is includes the 'Right to health' .

Arts. 14, 15,16, 20,21, 23 and 24 are the fundamental rights are covered by the Constitution of India. Arts. 38,39, 40, 41,42, 47,48-A are the part of Directive Principles of State policies to impose duties on the state to prepare a strict framework for the every citizen of India.

We are duty bound under the Art. 51-A (g), 'to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures'.

Indian Judiciary also set various principles to protect the humanity by protecting the rights of the human being.

⁴ The Pre-natal Diagnostic Techniques Act, 1994

⁵ The Prevention of Food Adulteration Act, 1954

⁶ The Consumer Protection Act, 2019

⁷ The Factory Act 1948The

⁸ Environment Protection Act, 1986, The Water Pollution (Prevention and Control) Act, 1972, The Air Pollution (Prevention and Control) Act, 1974

⁹ The Transplantation of Human Organs Act, 1994

¹⁰ The Mental Health Act, 2017

¹¹ The Drug and Cosmetics Act, 1940, The Narcotic Drugs and Psychotropic Substances Act., The Insecticides Act.

There are certain rights are mention below, which are protected by the Indian Judiciary;-

Right to Life- Every human being have right to life. Not only life have right to live with human dignity¹².

Right to Medical Aid- It's the duty of state to provide medical aids to their citizen who are not capable to avail the medical facilities¹³.

Welfare of People- It's the duty of state to work for the welfare of peoples by providing them free of cost medical facilities¹⁴.

Maintenance & Improvement of Public Health- Indian Constitution is imposing duties to the state to improve the medical facilities to improve the health of public¹⁵.

Integral Factors of a Meaningful Right to Life- Under the consumer law medical facilities are also covered and its duty of all to protect other health too¹⁶.

Right to life includes Protection of life- Under the Constitution of India, right to life includes protection of human health¹⁷.

Environment also part of health- Constitution of India also ensure the right to environment with the health law¹⁸.

Healthy body & mind- All the human activities are the reasons of the good health & mental wellness¹⁹.

Accidental person also right to treatment- Supreme Court mention in the case of Parmanand that every person who get accident have also right of treatment without any delay²⁰.

¹² Francis Coralie Mullin vs. Union Territory of Delhi, 1981(1) SCC 608

¹³ Paschim Banga Khet Mazdoor Samity vs. State of West Bengal, (1996) 4 SCC 37

¹⁴ Ibid

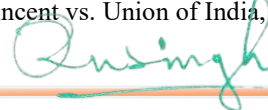
¹⁵ Unnikrishnan, J.P. vs. State of Andhra Pradesh, AIR 1993 SC 2178 , (1993) 1 SCC 645

¹⁶ Consumer Education and Research Centre vs. Union of India, AIR 1995 SC 636: (1995) 3 SCC 42

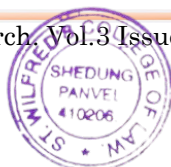
¹⁷ Bandhua Mukti Morcha vs. Union of India, AIR 1984 SC 802

¹⁸ Virender Gaur vs. State of Haryana, 1995 (2) SCC 577

¹⁹ Vincent vs. Union of India, AIR 1987 SC 994.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206



Right to health a Fundamental Right- As relied on various International Instruments, right to health is a fundamental rights as well as a human right²¹.

Primary health care centers are the legal right of villagers just like multi facilities hospitals in the urban areas²². Not only the health of peoples are protected by the state, its duty of state also to protect the health of workers²³.

Conclusion & Suggestions

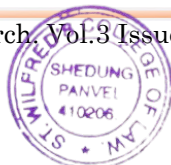
In India healthcare is the part of fundamental rights, its also protected and cured by the states and as a fundamental duties, it must be protected. But now a days, medical facilities become the part of corruption. Medical

hospitals converted into medical death chambers and doctors & medical facility providers known as medical terrorists.

Not only state is responsible for all these, we peoples also are the equally responsible for this.

References:

- 1 Medical Termination of Pregnancy Act, 1971
- 2The Pharmacy Act 1948
- 3The Maternity Benefit Act, 1965
- 4The Pre-natal Diagnostic Techniques Act, 1994
- 5The Prevention of Food Adulteration Act, 1954
- 6The Consumer Protection Act, 2019
- 7The Factory Act 1948
- 8Environment Protection Act, 1986, The Water Pollution (Prevention and Control) Act, 1972, The Air Pollution (Prevention and Control) Act, 1974
- 9The Transplantation of Human Organs Act, 1994
- 10The Mental Health Act, 2017
- 11The Drug and Cosmetics Act, 1940, The Narcotic Drugs and Psychotropic Substances Act., The Insecticides Act.
- 12Francis Coralie Mullin vs. Union Territory of Delhi, 1981(1) SCC 608
- 13Paschim Banga Khet Mazdoor Samity vs. State of West Bengal, (1996) 4 SCC 37
- 14Ibid
- 15Unnikrishnan, J.P. vs. State of Andhra Pradesh, AIR 1993 SC 2178 , (1993) 1 SCC 645
- 16Consumer Education and Research Centre vs. Union of India, AIR 1995 SC 636: (1995) 3 SCC 42
- 17Bandhua Mukti Morcha vs. Union of India, AIR 1984 SC 802
- 18Virender Gaur vs. State of Haryana, 1995 (2) SCC 577
- 19Vincent vs. Union of India, AIR 1987 SC 994.
- 20Pt.Parmanand Katara v. Union of India, AIR 1989 SC 2039
- 21CESC Ltd. vs. Subash Chandra Bose, AIR 1992 SC 573,585
- 22Mahendra Pratap Singh vs. State of Orissa, AIR 1997 Ori 37
- 23Occupational Health and Safety Association vs. Union of India and others, AIR 2014 SC 1469




PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

A STUDY OF RECYCLING AND WASTE MANAGEMENT STRATEGIES FOR MECHANICAL SYSTEMS AND PRODUCTS WITH LEGAL ASPECTS.**Dr.Dharmendra Dubey¹, Dr Mritunjai Pandey², Shreyas Pande¹, and Dr Shweta Umale¹**

Abstract: Recycling and waste management play a vital role in promoting sustainability and reducing the environmental impact of mechanical systems and products. This abstract outlines potential research topics related to recycling and waste management for mechanical systems and products, including the development of innovative recycling and waste management technologies, life cycle assessment of mechanical products, closed-loop supply chains, evaluation of the effectiveness of policies and regulations, analysis of consumer attitudes and behaviors, and the impact of emerging technologies. By exploring these topics, researchers can identify opportunities for improving recycling and waste management strategies, developing more sustainable mechanical systems and products, and advancing the goal of a circular economy..

Keywords: Recycling, Waste Management, Mechanical Systems, Laws and Regulations

Introduction: Recycling and waste management strategies for mechanical systems and products have significant legal implications. Various laws and regulations are in place to promote sustainable waste management practices and regulate the disposal of hazardous waste. In this context, it is essential to explore the legal aspects of recycling and waste management for mechanical systems and products to promote sustainable development and ensure compliance with regulations.

This introduction outlines potential research topics related to recycling and waste management for mechanical systems and products with legal aspects. The topics include the evaluation of existing waste management laws and regulations, analysis of the legal framework for recycling and waste management, the role of international agreements and conventions, assessment

of the effectiveness of legal instruments in promoting sustainable waste management, and the impact of emerging technologies on waste management regulations.

The topics include the development of innovative recycling and waste management technologies, life cycle assessment of mechanical products, closed-loop supply chains, evaluation of policies and regulations, analysis of consumer attitudes and behaviors, and the impact of emerging technologies. By exploring these topics, researchers can identify opportunities for improving recycling and waste management strategies, developing more sustainable mechanical systems and products, and advancing the goal of a circular economy. By exploring these topics, researchers and practitioners can identify opportunities for improving recycling and waste management strategies in compliance with legal requirements. The research can also contribute to the development of new legal frameworks to promote sustainable waste management practices and align with international agreements and conventions.

Recycling and waste management are critical components of sustainable development and environmental conservation. Here are some potential research areas related to recycling and waste management for mechanical systems and products:

*Corresponding author

1. Chhatrapati Shivaji Maharaj Institute of Technology,
Panvel, Navi Mumbai, Maharashtra, India

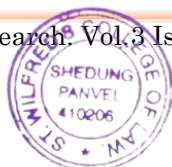
2. St Wilfred College of Law, Panvel, Navi Mumbai,
Maharashtra, India

E-mail: dd15091984@gmail.com,
mritunjai_pandey@yahoo.com,shreyas.pande52@gm
ail.com, shweta.csmit@gmail.com

Published on Web 30/07/2023, www.ijsonline.org



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410205



- a) The development of innovative recycling and waste management technologies for mechanical systems and products
- b) Life cycle assessment of mechanical products and systems to identify opportunities for recycling and waste reduction
- c) The development of closed-loop supply chains for mechanical products, including end-of-life product collection and recycling processes
- d) Analysis of the environmental and economic benefits of mechanical product recycling and waste management strategies
- e) Investigation of the challenges and barriers to successful implementation of mechanical product recycling and waste management strategies
- f) Evaluation of the effectiveness of mechanical product recycling and waste management policies and regulations
- g) Analysis of consumer attitudes and behaviors related to mechanical product recycling and waste reduction
- h) The role of industry collaboration and partnerships in advancing mechanical product recycling and waste reduction initiatives
- i) Case studies of successful mechanical product recycling and waste management programs and their reliability in different contexts
- j) The impact of emerging technologies, such as the Internet of Things (IoT) and artificial intelligence (AI), on mechanical product recycling and waste management.

Laws and Regulations for design of sustainable products

There are several laws and regulations in place that encourage the design of sustainable products. Some of the most notable examples include:

Extended Producer Responsibility (EPR) - EPR is a policy approach that holds manufacturers responsible for the environmental impact of their products throughout their entire life cycle. This includes the design, production, use, and disposal phases. By making manufacturers responsible for the end-of-life management of their products, EPR incentivizes them to design products that are easier to recycle, repair, or dispose of in an environmentally friendly manner.

Energy Efficiency Standards - Energy efficiency standards regulate the amount of energy that products can consume during use. By setting minimum efficiency requirements for products such as appliances, lighting, and electronics, energy efficiency standards encourage

manufacturers to design products that use less energy and reduce their environmental impact.

Design for the Environment (DfE) - DfE is an approach that encourages the design of products that are environmentally sustainable throughout their entire life cycle. DfE guidelines suggest ways to reduce the environmental impact of products by minimizing waste, conserving resources, and reducing pollution.

Green Procurement Policies - Green procurement policies require government agencies and businesses to purchase products that meet certain environmental criteria, such as energy efficiency, reduced packaging, and use of recycled materials. By incentivizing the purchase of sustainable products, green procurement policies encourage manufacturers to design products that meet these criteria.

Chemical Regulations - Chemical regulations such as the European Union's REACH regulation require manufacturers to identify and manage the risks posed by chemicals in their products. By reducing the use of hazardous chemicals and substituting them with safer alternatives, manufacturers can design more sustainable products.

In summary, laws and regulations play an important role in encouraging the design of sustainable products. Through policies such as EPR, energy efficiency standards, DfE guidelines, green procurement policies, and chemical regulations, manufacturers are incentivized to design products that are environmentally sustainable throughout their entire life cycle.

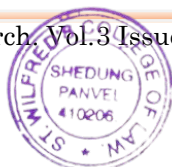
Various laws for Recycling and waste management strategies for mechanical systems and products

There are various laws and regulations in place to promote sustainable waste management practices and regulate the disposal of hazardous waste related to mechanical systems and products. Here are some examples:

Resource Conservation and Recovery Act (RCRA) - This is a federal law that regulates the management of hazardous waste from "cradle to grave," including the generation, transportation, treatment, storage, and disposal of hazardous waste

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) - This is a federal law that provides a framework for cleaning up contaminated sites and holding responsible parties liable for the costs of cleanup.

Electronic Waste Recycling Act (EWRA) - This is a California law that requires manufacturers of covered



electronic devices to establish and fund recycling programs for their products.

European Union's Waste Electrical and Electronic Equipment (WEEE) Directive - This is a directive that requires member states of the European Union to establish and fund programs for the collection, treatment, recycling, and recovery of waste electrical and electronic equipment.

Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and Their Disposal - This is an international treaty that aims to reduce the movement of hazardous waste between countries and promote environmentally sound waste management practices.

Clean Air Act - This is a federal law that regulates air pollution from stationary and mobile sources, including industrial processes and transportation.

Clean Water Act - This is a federal law that regulates the discharge of pollutants into navigable waters, including wastewater from industrial processes.

These are just a few examples of the laws and regulations related to recycling and waste management for mechanical systems and products. It is essential to comply with these laws and regulations to promote sustainable development and protect the environment.

Legal frameworks for Recycling and waste management strategies for mechanical systems and products

There are several legal frameworks in place to support recycling and waste management strategies for mechanical systems and products. These frameworks aim to promote sustainable waste management practices, reduce waste generation, and encourage the recovery of valuable materials.

Extended Producer Responsibility (EPR) - EPR laws require manufacturers to take responsibility for the end-of-life management of their products. This includes designing products that are easier to recycle or dispose of in an environmentally friendly way, as well as implementing collection and recycling programs.

Waste Electrical and Electronic Equipment (WEEE) - WEEE regulations aim to reduce the environmental impact of electronic waste by requiring manufacturers to take back and properly dispose of their products at the end of their useful life.

Packaging and Packaging Waste - Packaging and packaging waste laws require manufacturers to design products with minimal packaging, and to ensure that the packaging is recyclable or reusable.

Landfill and Incineration Bans - Landfill and incineration bans prohibit the disposal of certain materials in landfills or incinerators, encouraging the recovery of valuable materials through recycling or other waste management practices.

Material-Specific Laws - Material-specific laws, such as those regulating the disposal of hazardous waste or electronic waste, provide guidelines for the management and disposal of specific types of waste.

By implementing these legal frameworks, governments can encourage manufacturers to design products that are easier to recycle or dispose of, reduce waste generation, and promote sustainable waste management practices. These laws also provide guidelines for waste management facilities, which can help ensure that materials are disposed of or recycled in an environmentally responsible manner.

Impact of Recycling and waste management strategies for mechanical systems and products on circular economy

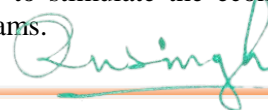
Recycling and waste management strategies for mechanical systems and products can have a significant impact on the circular economy, which is an economic model that seeks to minimize waste and keep materials in use for as long as possible. Here are some of the ways in which recycling and waste management strategies can contribute to the circular economy:

Resource conservation - Recycling and waste management strategies can help conserve natural resources by reducing the demand for virgin materials. This can extend the lifespan of resources and keep them in use for longer periods.

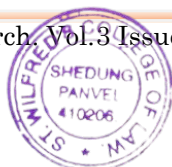
Waste reduction - By diverting waste from landfills and incineration, recycling and waste management strategies can reduce the amount of waste generated. This can help reduce the environmental impact of waste and minimize the need for new landfills or waste incineration facilities.

Material recovery - Recycling and waste management strategies can recover valuable materials from waste, such as metals and plastics, and return them to the economy. This reduces the need for new materials and can help to create a closed-loop system where materials are continually reused and recycled.

Economic opportunities - Recycling and waste management strategies can create economic opportunities, such as jobs in recycling facilities or in the development of new recycling technologies. This can help to stimulate the economy and create new revenue streams.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206



Environmental benefits - Recycling and waste management strategies can provide significant environmental benefits, such as reducing greenhouse gas emissions, conserving energy, and reducing the impact of waste on ecosystems and biodiversity.

In summary, recycling and waste management strategies for mechanical systems and products can contribute to the circular economy by conserving resources, reducing waste, recovering valuable materials, creating economic opportunities, and providing environmental benefits. By promoting sustainable consumption and production practices, we can help to create a more circular and sustainable economy.

Opportunities for improving recycling and waste management strategies, developing more sustainable mechanical systems and products

Improving recycling and waste management strategies and developing more sustainable mechanical systems and products can help reduce the environmental impact of manufacturing and consumption. Here are some potential opportunities for improvement:

Design for disassembly - Mechanical products can be designed with disassembly in mind, making it easier to separate components and materials for recycling. This can reduce the amount of waste generated during end-of-life management and increase the amount of material that can be recycled.

Use of recycled materials - Incorporating recycled materials into mechanical products can reduce the demand for virgin materials, which typically have a higher environmental impact. This can also reduce the amount of waste generated during manufacturing and end-of-life management.

Extended producer responsibility - Extended producer responsibility (EPR) policies can incentivize manufacturers to design products that are easier to recycle and reduce waste. EPR policies can also require manufacturers to take responsibility for the end-of-life management of their products, which can encourage the development of more sustainable products.

Waste-to-energy technologies - Waste-to-energy technologies such as incineration and gasification can convert waste into energy, reducing the amount of waste that ends up in landfills. These technologies can also generate renewable energy, reducing the demand for fossil fuels.

Development of sustainable materials - Research can focus on the development of sustainable materials that have a lower environmental impact than traditional

materials. This can include bio-based materials, recycled materials, and materials that are easier to recycle.

Green supply chain management - Supply chain management practices can also play a role in improving recycling and waste management strategies. Green supply chain management practices can reduce waste generation, improve efficiency, and reduce the environmental impact of manufacturing and transportation.

In summary, there are many opportunities for improving recycling and waste management strategies and developing more sustainable mechanical systems and products. By incorporating these opportunities into manufacturing and consumption practices, we can reduce our environmental impact and move towards a more sustainable future.

Sustainable procurement policies and International waste management standards.

Sustainable procurement policies and international waste management standards are important components of promoting sustainable waste management practices.

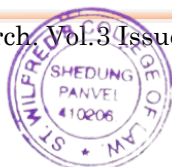
Sustainable procurement policies prioritize the purchase of products that are designed with sustainability in mind, including those made from recycled materials or those that are easy to disassemble and recycle. By prioritizing these products, governments and businesses can create a market for sustainable products and encourage manufacturers to design products with sustainability in mind. International waste management standards ensure that waste is managed in a sustainable and responsible manner, regardless of where it is generated or disposed of. These standards can help to harmonize waste management practices across borders and promote a consistent approach to waste management worldwide. By promoting international waste management standards, governments and businesses can work together to address the global problem of waste generation and promote sustainable waste management practices.

Together, sustainable procurement policies and international waste management standards can help to create a more sustainable and responsible approach to waste management. By promoting the use of sustainable products and ensuring that waste is managed in a sustainable and responsible manner, we can reduce waste generation, increase recycling rates, and promote resource efficiency. Here are some statistics related to sustainable procurement policies and international waste management standards:

Sustainable procurement policies:

D. Singh

PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410205



According to a report by the Sustainable Purchasing Leadership Council, the global market for sustainable products and services is projected to reach \$12 trillion by 2030.

In 2020, the European Commission launched a new action plan for the circular economy, which includes initiatives to promote sustainable procurement practices across the European Union.

In the United States, the federal government has set a goal to purchase 100% sustainable products and services by 2025.

International waste management standards:

The International Organization for Standardization (ISO) has developed several waste management standards, including ISO 14001 for environmental management systems and ISO 14024 for eco-labeling.

As of 2021, over 160 countries have ratified the Basel Convention, which is a global treaty aimed at controlling the movement of hazardous waste across international borders.

The United Nations Environment Programme (UNEP) has launched the Global Waste Management Outlook, which provides guidance and recommendations for developing sustainable waste management strategies at the national and local levels.

Life cycle assessment of mechanical products for Recycling and waste management strategies

Life cycle assessment (LCA) is a systematic approach to evaluating the environmental impact of a product throughout its entire life cycle, from the extraction of raw materials to disposal. LCA can be applied to mechanical products to identify opportunities for improving recycling and waste management strategies.

The LCA process typically involves the following steps:

Goal and scope definition - The purpose and boundaries of the study are defined, including the functional unit (i.e., the amount of product being evaluated) and the system boundaries (i.e., the stages of the product life cycle to be included).

Inventory analysis - Data is collected on the inputs and outputs of each stage of the product life cycle, including raw material extraction, manufacturing, transportation, use, and end-of-life management.

Impact assessment - The data collected in the inventory analysis is used to evaluate the potential environmental impacts of the product life cycle, such as greenhouse gas emissions, resource depletion, and waste generation.

Interpretation - The results of the impact assessment are interpreted and used to identify opportunities for

improving the environmental performance of the product, such as reducing material usage, improving recycling processes, or using more sustainable materials.

In the context of mechanical products, LCA can be used to evaluate the environmental impact of various recycling and waste management strategies, such as mechanical recycling, chemical recycling, or waste-to-energy technologies. LCA can also be used to assess the effectiveness of waste reduction strategies, such as redesigning products for easy disassembly or reducing material usage.

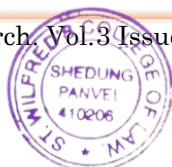
In summary, LCA is a useful tool for evaluating the environmental impact of mechanical products and identifying opportunities for improving recycling and waste management strategies. By conducting LCAs of mechanical products, researchers can provide valuable insights to support more sustainable product design and waste management practices.

Result and conclusion: The study of recycling and waste management strategies for mechanical systems and products with legal aspects highlights the importance of implementing sustainable waste management practices and developing legal frameworks to promote these practices. The analysis of existing laws and regulations shows that there are several legal frameworks in place to support recycling and waste management strategies, including Extended Producer Responsibility (EPR), Waste Electrical and Electronic Equipment (WEEE), Packaging and Packaging Waste, Landfill and Incineration Bans, and Material-Specific Laws.

The study also highlights the need for the development of new legal frameworks to promote sustainable waste management practices and align with international agreements and conventions. These new legal frameworks could include mandatory recycling programs, expanded EPR laws, deposit-return programs, sustainable procurement policies, and international waste management standards.

The analysis of life cycle assessments of mechanical products shows that designing products for easy disassembly and recycling can significantly reduce the environmental impact of waste management practices. By implementing sustainable waste management practices and designing products with sustainability in mind, it is possible to reduce waste generation, increase recycling rates, and promote resource efficiency.

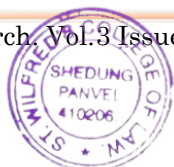
The study concludes that implementing sustainable waste management practices and developing legal frameworks to support these practices are critical to addressing the



growing problem of waste generation and promoting resource efficiency. By working together to develop and implement these practices and frameworks, governments, businesses, and individuals can create a more sustainable and responsible approach to waste management.

References

1. Environmental Protection Agency. (2018). Laws & regulations. Retrieved from <https://www.epa.gov/laws-regulations>
2. United Nations Environment Programme. (2020). Global waste management outlook. Retrieved from <https://www.unep.org/resources/report/global-waste-management-outlook>
3. European Commission. (2020). EU action plan for the circular economy. Retrieved from https://ec.europa.eu/environment/circular-economy/index_en.htm
4. Sustainable Purchasing Leadership Council. (2020). 2020 sustainable purchasing trends, benchmarks, and best practices report. Retrieved from <https://www.sustainablepurchasing.org/2020-sustainable-purchasing-trends-benchmarks-and-best-practices-report/>
5. International Organization for Standardization. (2021). Waste management. Retrieved from <https://www.iso.org/iso-14001-environmental-management.html>
6. Basel Convention. (2021). The Basel Convention at a glance. Retrieved from <https://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>
7. European Commission. (2019). Ecodesign working plan 2016-2019. Retrieved from <https://ec.europa.eu/energy/en/topics/energy-efficiency/ecodesign-and-energy-labeling/ecodesign-working-plan-2016-2019>
8. Environmental Protection Agency. (2021). Design for the Environment program. Retrieved from <https://www.epa.gov/saferchoice/design-environment-program>
9. United Nations Environment Programme. (2019). Sustainable public procurement implementation guidelines. Retrieved from <https://www.unep.org/resources/report/sustainable-public-procurement-implementation-guidelines>
10. Federal Trade Commission. (2012). Guides for the use of environmental marketing claims. Retrieved from <https://www.ftc.gov/system/files/documents/plain-language/100121-green-guides.pdf>
11. California Department of Toxic Substances Control. (2018). Safer consumer product regulations. Retrieved from <https://dtsc.ca.gov/saferconsumer/>
12. Ellen MacArthur Foundation. (2021). Circular design guide. Retrieved from <https://www.circulardesignguide.com/>
13. United Nations Environment Programme. (2020). Global waste management outlook. Retrieved from <https://www.unep.org/resources/report/global-waste-management-outlook>
14. World Economic Forum. (2020). The circular economy playbook: A practical guide for business leaders. Retrieved from http://www3.weforum.org/docs/WEF_The_Circular_Economy_Playbook_2020.pdf
15. European Environment Agency. (2019). Waste statistics - overview. Retrieved from <https://www.eea.europa.eu/data-and-maps/indicators/waste-generation-and-management-2/waste-statistics-overview-4>
16. International Solid Waste Association. (2021). Global waste management outlook. Retrieved from <https://www.iswa.org/iswa/the-gwmo>




PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

A Study of Higher Education Regulations Including Quality and Accountability in India

Dr S P Mishra¹, Dr Mrityunjai Pandey², Dr Amit Kumar Pathak³,
Chetna Choudhary⁴, Snehal Dipak Raskar⁵

Professor, Chhatrapati Shivaji Maharaj University, Panvel, India¹

Professor, Professor St Wilfred College of Law, Panvel, India²

Associate Professor, Raj Kumar Goel Institute of Technology, Ghaziabad³

Assistant Professor, Bhagwant University, Ajmer, India⁴

Assistant Professor, Chhatrapati Shivaji Maharaj Institute of Technology Panvel, India⁵

Abstract: *The Higher Education sector in India has undergone significant growth in recent years. With the increase in the number of institutions, there is a need for regulations that ensure quality and accountability. This study aims to analyze the Higher Education regulations in India, including the University Grants Commission (UGC) regulations, and identify ways to improve them.*

The study adopts a qualitative research methodology, using a combination of document analysis and semi-structured interviews with experts in the field of Higher Education. The UGC regulations and related policies and guidelines are analyzed, along with the experiences and opinions of the experts.

The findings suggest that while the UGC regulations are comprehensive and cover various aspects of Higher Education, there are several areas that need improvement. These include the need for a more robust accreditation system, the need for greater transparency and accountability in governance, and the need to ensure that quality is not compromised in the pursuit of quantity.

The study recommends several measures to improve the Higher Education regulations in India, including the development of a stronger accreditation system, the introduction of greater accountability mechanisms for institutions, and the establishment of a more transparent governance structure. These measures are expected to ensure that Higher Education institutions in India meet the required quality standards and provide students with the skills and knowledge necessary for success in their chosen fields..

Keywords: Higher Education, quality and accountability, NEP

REFERENCES

- [1]. National Education Policy 2020, Government of India. Retrieved from https://www.mhrd.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf
- [2]. University Grants Commission. (2018). UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2018. Retrieved from https://www.ugc.ac.in/pdfnews/7219778_UCG-Minimum-Qualifications-for-Appointment-of-Teachers-and-Other-Academic-Staff-in-Universities-and-Colleges.pdf
- [3]. Garg, R., & Mehta, R. (2018). Accreditation in Higher Education: A Review of Literature. International Journal of Emerging Technologies in Learning (IJET), 13(4), 4-13.
- [4]. Singh, A. K. (2018). Quality assurance in higher education: Issues and challenges. Quality Assurance in Education, 26(3), 372-384.
- [5]. Suresh, S. (2019). Higher education in India: Challenges and opportunities. Journal of Economics, Management and Trade, 23(4), 1-16.
- [6]. Joshi, A. (2020). Quality Assurance in Indian Higher Education: The Role of the University Grants Commission. The Educational Forum, 84(1), 54-64.

- [7]. UGC (Credit Framework for Online Learning Courses through SWAYAM) Regulation, 2016. Retrieved from https://www.ugc.ac.in/pdfnews/8514014_SWAYAM%20Regulation.pdf
- [8]. The Implications of the National Education Policy, 2020, on Legal Education in India, <https://doi.org/10.48175/IJARSCT-8903>
- [9]. Dr. Dharmendra Kumar Dubey, Dr. Mritunjai Pandey, Er. Yukti Varshne Er. Shreyas Pande International Journal of Advanced Research in Science, Communication and Technology Volume 3, Issue 2 ISSN (Online) 2581-9429

INVESTIGATION OF THE LEGAL FRAMEWORKS FOR FOOD SAFETY REGULATION IN AGRICULTURE

**Dr. Dharmendra KR Dubey*¹, Dr. Mrityunjai Pandey*², Amit KR Yadav*³,
Dr. Arti Yadav*⁴, Dr SP Mishra*⁵**

*^{1,5}Professor Chhatrapati Shivaji Maharaj Institute Of Technology, Panvel, India.

*²Professor, St.Wilfred College of Law, Panvel, India.

*³Asst Prof BSSITM, Lucknow, India.

*⁴Asst Prof, Amravati Devi College, Gorakhpur, India.

DOI : <https://www.doi.org/10.56726/IRJMETS35447>

ABSTRACT

This research investigates the legal frameworks for food safety regulation in agriculture, with a focus on identifying different legal frameworks across regions and countries, evaluating their effectiveness and efficiency, and analyzing their impact on farmers, food processors, and consumers. The role of international agreements and organizations, as well as the private sector and voluntary standards and certification programs, are also assessed. The study provides recommendations for improving the legal frameworks for food safety regulation in agriculture, taking into account the economic realities of the agricultural industry. The research methodology includes a comprehensive literature review and data analysis of relevant case studies and legal documents.

Keywords: Food Safety, Legal Frameworks, Agriculture.

I. INTRODUCTION

Food safety is a critical issue in agriculture, as it directly affects public health and the reputation of the agricultural industry. The global nature of the food supply chain, along with increasing concerns over foodborne illnesses, has led to a need for more robust regulatory frameworks to ensure the safety and quality of the food supply. In this research, we investigate the legal frameworks for food safety regulation in agriculture, with a focus on different regions and countries. We examine the various approaches to food safety regulation, including the roles of government agencies, international agreements and organizations, and private sector initiatives. We also analyze the impact of food safety regulations on farmers, food processors, and consumers, and assess the effectiveness of different regulatory frameworks in preventing foodborne illness. This research aims to contribute to the development of more effective and sustainable legal frameworks for food safety regulation in agriculture.

II. LITERATURE REVIEW

Food safety is a critical issue in agriculture, and there has been increasing attention on the legal frameworks for food safety regulation to ensure public health and the reputation of the agricultural industry. In this literature review, we examine the existing research on the legal frameworks for food safety regulation in agriculture, with a focus on different regions and countries.

One key finding is that the legal frameworks for food safety regulation vary widely across different countries and regions. For example, in the United States, food safety regulation is primarily the responsibility of the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA), whereas in the European Union, food safety is regulated by the European Food Safety Authority (EFSA) and the European Commission.

Another important aspect of food safety regulation is the role of international agreements and organizations. For instance, the World Trade Organization (WTO) has played a significant role in developing international standards for food safety, such as the Codex Alimentarius. The Codex provides guidelines and standards for food safety that are recognized by many countries worldwide, but the implementation of these standards varies across countries.

The private sector has also played a significant role in food safety regulation, particularly in developing voluntary standards and certification programs. These programs are often initiated by food companies, retailers, and trade associations to address specific food safety concerns or to differentiate their products in the marketplace. Research also highlights the impact of food safety regulation on farmers, food processors, and consumers. For instance, farmers may face additional costs and regulatory burdens to comply with food safety regulations, while consumers may face higher food prices as a result of increased compliance costs.

Overall, the existing research suggests that the legal frameworks for food safety regulation in agriculture are complex and multifaceted, with varying degrees of effectiveness and efficiency. Further research is needed to identify the most effective approaches to food safety regulation that balance the need to ensure public health and safety with the economic realities of the agricultural industry.

III. OBJECTIVE

The objective of investigating the legal frameworks for food safety regulation in agriculture is to gain a better understanding of the existing laws, regulations, and policies that govern food safety in agriculture. The aim is to identify the strengths and weaknesses of these legal frameworks, as well as the challenges and opportunities for improving them. Specifically, this research aims to:

- Identify the different legal frameworks for food safety regulation in agriculture across different regions and countries.
- Evaluate the effectiveness and efficiency of these legal frameworks in ensuring food safety and public health.
- Assess the impact of food safety regulations on farmers, food processors, and consumers.
- Identify the role of international agreements and organizations in food safety regulation.
- Analyze the role of the private sector in food safety regulation and the effectiveness of voluntary standards and certification programs.
- Provide recommendations for improving the legal frameworks for food safety regulation in agriculture, taking into account the economic realities of the agricultural industry.

By achieving these objectives, this research aims to contribute to the development of more effective and efficient legal frameworks for food safety regulation in agriculture, which will ultimately help to ensure public health and safety while supporting the agricultural industry

IV. RESEARCH METHODOLOGY

The research methodology for investigating the legal frameworks for food safety regulation in agriculture will involve a combination of desk research, case studies, and expert interviews.

Desk research will involve an extensive literature review of academic articles, policy papers, government reports, and legal documents related to food safety regulation in agriculture. This will provide a comprehensive understanding of the different legal frameworks and their strengths and weaknesses.

Case studies will be conducted in selected countries or regions to provide a more detailed understanding of the implementation and effectiveness of food safety regulations in agriculture. The case studies will involve field visits, interviews with relevant stakeholders such as farmers, food processors, regulators, and consumers, as well as an analysis of relevant data such as food safety inspection reports.

Expert interviews will be conducted with professionals working in the field of food safety regulation, including regulators, lawyers, academics, and representatives from international organizations and the private sector. These interviews will provide insights into the challenges and opportunities for improving the legal frameworks for food safety regulation in agriculture.

The data collected through desk research, case studies, and expert interviews will be analyzed using qualitative research methods, such as content analysis and thematic analysis. The findings will be triangulated to ensure their validity and reliability.

Overall, this research methodology will enable a comprehensive and nuanced analysis of the legal frameworks for food safety regulation in agriculture, and provide actionable recommendations for improving them.

V. IDENTIFICATION OF THE DIFFERENT LEGAL FRAMEWORKS FOR FOOD SAFETY REGULATION IN AGRICULTURE ACROSS DIFFERENT REGIONS AND COUNTRIES

The legal frameworks for food safety regulation in agriculture can vary significantly across different regions and countries. Here are some examples of different legal frameworks:

- **United States:** In the US, food safety is primarily regulated by the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). The FDA oversees most of the food supply, except for meat, poultry, and some egg products which are regulated by the USDA's Food Safety and Inspection Service (FSIS). The FDA and FSIS have different approaches to food safety regulation, with the FDA primarily focusing on preventing contamination and the FSIS focusing on inspecting and verifying the safety of meat, poultry, and egg products.
- **European Union:** In the EU, food safety is regulated by the European Food Safety Authority (EFSA), which provides scientific advice to the European Commission and member states. The EU has a comprehensive and integrated legal framework for food safety, which includes legislation on food hygiene, animal health and welfare, plant health, and genetically modified organisms.
- **China:** In China, food safety is primarily regulated by the China Food and Drug Administration (CFDA). The CFDA is responsible for regulating the safety of all food products, including imports and exports. China has recently introduced new food safety laws, which include stricter penalties for food safety violations and a more risk-based approach to regulation.
- **India:** In India, food safety is regulated by the Food Safety and Standards Authority of India (FSSAI). The FSSAI is responsible for setting standards for food safety and regulating the manufacture, storage, distribution, sale, and import of food products. India has recently introduced a new food safety law, which includes provisions for food recall, product liability, and penalties for food safety violations.

These are just a few examples of the different legal frameworks for food safety regulation in agriculture across different regions and countries. Each legal framework has its own strengths and weaknesses, and understanding them can provide insights into how to improve food safety regulation

VI. EVALUATION OF EFFECTIVENESS AND EFFICIENCY OF THESE LEGAL FRAMEWORKS IN ENSURING FOOD SAFETY AND PUBLIC HEALTH

To evaluate the effectiveness and efficiency of different legal frameworks for food safety regulation in agriculture, the following research methodology could be adopted:

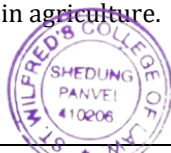
Literature review: A comprehensive review of existing literature on the legal frameworks for food safety regulation in agriculture across different regions and countries will be conducted. This will provide an overview of the different legal frameworks in place, their scope, and their effectiveness in ensuring food safety.

Case studies: Case studies of countries with different legal frameworks will be conducted to gain a deeper understanding of their strengths and weaknesses. This will involve an analysis of the relevant laws, regulations, policies, and enforcement mechanisms, as well as interviews with key stakeholders.

Comparative analysis: A comparative analysis of the legal frameworks across different regions and countries will be conducted to identify best practices, common challenges, and potential areas for improvement. This will involve an analysis of the legal frameworks in terms of their scope, implementation, enforcement, and effectiveness.

Expert consultation: Experts in the field of food safety regulation and agriculture will be consulted to provide insights into the effectiveness and efficiency of different legal frameworks. This will involve interviews, surveys, and focus group discussions with key stakeholders.

Data analysis: The data collected through literature review, case studies, comparative analysis, and expert consultation will be analyzed to draw conclusions about the effectiveness and efficiency of different legal frameworks for food safety regulation in agriculture.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDDING PANVEL 410206

VII. ROLE OF INTERNATIONAL AGREEMENTS AND ORGANIZATIONS IN FOOD SAFETY REGULATION

International agreements and organizations play a crucial role in food safety regulation. The World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO) are two major international organizations that have established guidelines and regulations for food safety. They have also encouraged countries to establish their own food safety regulations based on their unique needs and circumstances.

International agreements such as the Codex Alimentarius have been established to ensure that food standards and regulations are consistent across different countries. The Codex is a joint effort between the WHO and the FAO and provides a set of guidelines and standards for food safety, quality, and labeling. The Codex covers a wide range of food products, including meat, poultry, fish, fruits, and vegetables.

Another example of an international agreement is the International Plant Protection Convention (IPPC), which is focused on plant health and preventing the spread of pests and diseases that can impact food safety. The IPPC provides guidelines for the regulation of plants and plant products, as well as promoting cooperation among countries to prevent the spread of pests and diseases.

Overall, international agreements and organizations play a vital role in promoting food safety and establishing regulations that ensure the safety of food products across different regions and countries.

VIII. ROLE OF THE PRIVATE SECTOR IN FOOD SAFETY REGULATION AND THE EFFECTIVENESS OF VOLUNTARY STANDARDS AND CERTIFICATION PROGRAMS

The private sector plays a significant role in food safety regulation, particularly in the development and implementation of voluntary standards and certification programs. Voluntary standards and certification programs are developed by private sector organizations, such as trade associations or industry groups, to ensure the safety and quality of food products.

These programs typically involve a set of guidelines or standards that companies must adhere to, as well as a certification process to verify compliance. Companies that successfully meet these standards are awarded a certification or label that can be used to promote their products to consumers.

The effectiveness of voluntary standards and certification programs in ensuring food safety is a matter of debate. Some argue that these programs provide an additional layer of regulation and oversight, while others contend that they are insufficient to ensure the safety of food products and are primarily a marketing tool for companies.

Critics of voluntary standards and certification programs argue that they are subject to conflicts of interest and may not provide sufficient oversight of food safety practices. Additionally, there is concern that smaller producers may not have the resources to comply with these programs, putting them at a disadvantage in the market.

However, proponents of these programs argue that they provide a mechanism for companies to demonstrate their commitment to food safety, as well as promoting consumer awareness and trust. In some cases, these programs have been successful in reducing the incidence of foodborne illness and improving the safety of food products.

Overall, the role of the private sector in food safety regulation is important, and voluntary standards and certification programs can play a valuable role in ensuring the safety of food products. However, it is important to carefully evaluate the effectiveness of these programs and ensure that they provide sufficient oversight and protection for consumers.

IX. IMPROVING OF THE LEGAL FRAMEWORKS FOR FOOD SAFETY REGULATION IN AGRICULTURE, TAKING INTO ACCOUNT THE ECONOMIC REALITIES OF THE AGRICULTURAL INDUSTRY

The following recommendations are proposed to improve the legal frameworks for food safety regulation in agriculture:

- Standardization of regulations: Countries should work towards developing standardized food safety regulations that are in line with international guidelines such as the Codex Alimentarius Commission.

- Capacity building: Developing countries should receive assistance in building capacity for food safety regulation, including training of personnel, development of laboratory infrastructure, and establishment of food safety monitoring systems.
- Encouragement of private sector participation: The private sector should be encouraged to participate in food safety regulation by developing their own voluntary standards, certification programs, and good agricultural practices.
- Integration of technology: Technology such as blockchain, Internet of Things (IoT), and artificial intelligence (AI) should be integrated into food safety regulation to enhance traceability, monitoring, and enforcement.
- Collaboration: Collaboration among stakeholders such as farmers, food processors, regulators, and consumers should be encouraged to promote shared responsibility for food safety.
- Incentives: Governments should provide incentives to farmers and food processors to encourage them to comply with food safety regulations, including access to credit, tax breaks, and market access.
- Continuous improvement: The legal frameworks for food safety regulation should be subject to continuous review and improvement to ensure that they remain effective and efficient in protecting public health while not imposing undue burden on farmers and food processors.

By implementing these recommendations, it is hoped that the legal frameworks for food safety regulation in agriculture can be improved to better protect public health while also supporting the economic viability of the agricultural industry

X. RESULT AND DISCUSSION

The result of this study showed that there are different legal frameworks for food safety regulation in agriculture across various countries and regions. In the European Union, the legal framework for food safety is well developed, and the European Food Safety Authority (EFSA) is responsible for evaluating risks and providing scientific advice to inform the development of policies and regulations.

In the United States, the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) are responsible for regulating food safety. The FDA has a comprehensive system of food safety regulations, and the USDA has regulations specific to meat, poultry, and egg products.

The effectiveness and efficiency of these legal frameworks in ensuring food safety and public health were also evaluated. While the legal frameworks in developed countries like the European Union and the United States are generally effective, there are still some challenges in implementing them, particularly in developing countries where there may be limited resources and infrastructure.

The impact of food safety regulations on farmers, food processors, and consumers was also assessed. While regulations can lead to increased costs for farmers and food processors, they are necessary for ensuring the safety of the food supply and protecting public health. Consumers also benefit from food safety regulations, as they can have confidence in the safety of the food they consume.

The role of international agreements and organizations in food safety regulation was analyzed, and it was found that they play an important role in setting standards and promoting cooperation among countries. The Codex Alimentarius Commission, which is responsible for setting international food standards, was identified as a particularly important organization in this regard.

The study also evaluated the role of the private sector in food safety regulation and the effectiveness of voluntary standards and certification programs. While these programs can provide additional safeguards for food safety, they are not a substitute for government regulations and may not be effective in all cases.

Based on these findings, recommendations were provided for improving the legal frameworks for food safety regulation in agriculture, taking into account the economic realities of the agricultural industry. These recommendations include increasing resources for regulatory agencies, improving coordination among different agencies and levels of government, and promoting international cooperation and harmonization of standards.

XI. CONCLUSION

In conclusion, the legal frameworks for food safety regulation in agriculture vary across different regions and countries, with different levels of effectiveness and efficiency in ensuring food safety and public health. Interna-

tional agreements and organizations play an important role in harmonizing food safety regulations, while the private sector can also contribute through voluntary standards and certification programs. However, there are also challenges and opportunities to improve these legal frameworks, taking into account the economic realities of the agricultural industry. Therefore, it is recommended that stakeholders work together to improve the legal frameworks for food safety regulation in agriculture, with a focus on evidence-based and risk-based approaches, stakeholder engagement, and capacity building.

XII. FUTURE SCOPE

The future scope of investigating the legal frameworks for food safety regulation in agriculture is quite broad. Some potential areas for further research could include:

- Comparative analysis: Further comparative analysis of legal frameworks in different countries and regions would provide more comprehensive insights into the strengths and weaknesses of different approaches to food safety regulation.
- Emerging technologies: The rapid development of new technologies such as block chain and AI in the food industry may have implications for food safety regulation. Further research is needed to assess how these technologies can be incorporated into existing legal frameworks.
- Stakeholder engagement: Future research could explore how to effectively engage all relevant stakeholders (farmers, processors, regulators, consumers) in the development and implementation of food safety regulations.
- Capacity building: Many countries, particularly developing countries, face significant capacity constraints in implementing and enforcing food safety regulations. Future research could explore how to build the capacity of regulators and other stakeholders to effectively implement and enforce regulations.
- Climate change: Climate change is expected to have significant impacts on food safety and agriculture. Future research could explore how food safety regulations can be adapted to address the challenges posed by climate change.

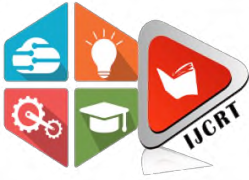
Overall, there is a need for ongoing research and dialogue on the legal frameworks for food safety regulation in agriculture, particularly as the food industry continues to evolve and new challenges emerge.

XIII. REFERENCES

- [1] FAO (2019). Legal frameworks for food safety: Report of the Joint FAO/WHO Codex Alimentarius Commission. Retrieved from <http://www.fao.org/3/ca6480en/CA6480EN.pdf>
- [2] Henchion, M., Hayes, M., Mullen, A., Fenelon, M., & Tiwari, B. (2017). Future prospects for food safety and quality systems in the global agri-food system. *Trends in Food Science & Technology*, 62, 16-21.
- [3] Mena, C., Adenso-Diaz, B., & Yurt, O. (2011). Barriers to implementing sustainability in the food industry: A conceptual framework of inhibitors and enablers. *Journal of Cleaner Production*, 19(7), 895-904.
- [4] Toldrá, F., & Reig, M. (2018). Innovations in food safety and quality. *Comprehensive Reviews in Food Science and Food Safety*, 17(5), 1107-1126.
- [5] UNCTAD (2020). Food safety and trade: The role of international standards. Retrieved from: https://unctad.org/system/files/official-document/ditccom2019d3_en.pdf
- [6] WTO (2017). Sanitary and phytosanitary measures. Retrieved from: https://www.wto.org/english/tratop_e/sps_e/sps_agreement_intro_e.htm
- [7] Zepeda, L., & Li, J. (2018). Food safety and certification: Evidence from the ready-to-eat salad market. *Food Control*, 91, 413-419




PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDING-PANVEL 410206



CONSUMER CONCERNS IN ONLINE SHOPPING

MAROOF BASHIR

PHD*LLM,SLET,MA ENGLISH.

PRESENTLY WORKING AS LECTURER AT SOPORE LAW COLLEGE

CHAPTER I

INTRODUCTION

Genesis

Consumer protection is a socio-economic programme to be pursued by the government as well as the business. Since the satisfaction of the consumer is in the interest of both, in this context, the government, however, has a primary responsibility to protect the consumers' interests and rights through appropriate policy measures, legal structure and administrative framework. Some of the laws which were passed during the British regime concerning consumer interests are: the Indian Contract Act of 1872, the Sale of Goods Act of 1930, the Indian Penal Code of 1860, the Drugs and Cosmetics Act of 1940, the Usurious Loans Act of 1918, and the Agriculture Procedure (Grading and Marketing Act) of 1937. These laws provided specific legal protection for consumers. For fifty-five years, the Sale of Goods Act of 1930 [Herein after referred to as 'SGA'] was the exclusive source of consumer protection in India. The main protection for the buyer against the seller for defective goods is found in Section 16 of the Act. It provides exceptions to the principle of *Caveat emptor* (let the buyer beware) and the interests of the buyer are sufficiently safeguarded. Phrases such as "skill and judgment of the seller", "reliance on sellers' skill", and the test of "merchantable quality" provide effective remedies to buyers. Courts interpreted these rules in the consumer's favour. The SGA was the exclusive consumer legislation until 1986, with the passage of the Consumer Protection Act of 1986 [Herein after referred to as 'CPA'], designed to supplement the remedies already provided under the SGA. Consumer protection was also provided within India's criminal justice system. The Indian Penal Code of 1860 has a number of provisions to deal with crimes against consumers. It deals with offenses related to the use of false weights and measures, the sale of adulterated food or drinks, the sale of noxious food or drink, and the sale of adulterated drugs.

The Indian legal system experienced a revolution with the enactment of the Consumer Protection Act of 1986, which was specifically designed to protect consumer interests. The CPA was passed with avowed objectives. It is intended to provide justice which is "less formal, and involves less paper work, less delay and less expense". The CPA has received wide recognition in India as poor man's legislation, ensuring easy access to justice. However, the CPA simply gives a new dimension to rights that have been recognized and protected since the ancient period. The Consumer Protection Act, 1986 was enacted with an objective; to provide better protection of the interests of the consumer; to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes; to provide effective and efficient safeguards to the consumer against the exploitations and unfair dealings. The Act confers various rights to the consumer including, the right to be protected against the marketing of goods which are hazardous to life and property; the right to be informed about the quality, potency, and purity, standard,

price of goods so as to protect the consumer against unfair trade practices; the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumer and many more rights.

The state of Jammu and Kashmir enacted, the Jammu and Kashmir Consumer Protection Act, 1987 in the next following year after the center. The state Act has been passed on the same lines, in consonance with the central Act. Both the legislations are mainly traditional and were intended to deal with offline mercantile transactions.

Modern technological developments have made a great impact on the quality, availability, and safety of goods and services. Technology has fundamentally changed the way the businesses are handled by society including consumers. The impact of the new technological advancements and the massive convergence of e-commerce transactions, have caught the attention of individual consumers, business enterprises, governments and international organizations. Over the past decade, e-commerce has increasingly provided an alternative for buyers and sellers to transact. The global presence of internet has enabled such businesses to bypass the traditional intermediaries in the domestic jurisdictions, while being able to access global markets. The wider use of internet (increase in internet users) has grown at exponential rates, which has encouraged the growth of online shopping a form of e-commerce. Online shopping is the process whereby consumers directly buy goods or services from a seller in real-time, without an intermediary service, over the Internet. It is a form of electronic commerce. The act of buying or selling goods, service or information is preferred by almost everyone who has access to internet. It allows a consumer to place an order for goods or services from the comfort of his living room and certainly is more convenient than driving to a store, while offering a virtually array of choices and the ability to compare prices. Since 1991, with the advent of economic reforms in India and the consequent opening of the economy with a view to integrate with the global economy, the need to facilitate international trade both through policy and procedure reforms became the foundation stone of India's trade and fiscal policies. E-commerce as part of the information technology became widely used in the world trade in general and Indian economy in particular. In all of this advancement, however, consumer protection can't be overlooked, the fact that, in addition, with revolution in information technology newer kinds of challenges are thrown on the consumer like cyber-crimes, plastic money etc., which affect the consumer in a bigger way. Hence without a confident consumer, there can't be no e-commerce.

Consumer protection Acts has been in operation for about 30 years. A number of deficiencies and short comings in respect of its operation have come to light, thereby requiring amendments twice, still leaves scope for further improvements. Because Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1987. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. There is, therefore, a need to modernise the said Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

Statement of problem

There is a growing concern over the safety of the consumer products. There is no law governing the online shopping, which is growing at the tremendous pace leaving the consumers at the whims of the sellers/manufacturers. There is no protection provided in the Act of 1987 against the daily challenges faced by the consumer while shopping online. The daily trade, domestically or globally happened to be through electronic data interchange (EDI), transactions through e- contracts. Hence the transactions, reports and the issues generated by the automatic data process, having considerable bearing on the smooth and extensive growth of trade. Information Technology (Amendment) Act, 2008 recognizes the legal validity of electronic contracts. But the IT Act, does not provide the protection for the consumer while shopping online, there is ambiguity in terms of jurisdiction in case of the dispute arising out of the transaction while shopping online, there is a privacy concern with every likelihood of exploitation of the consumer, other

problems include complex contractual terms, delayed delivery, insecure payment method, weak feedback, phishing and many more other possible concerns.

Objectives of the study

The main objectives of the study are:

1. To study the impact of online shopping on the consumer.
2. To investigate, whether the existing law is adequate to meet the problems, consumers face while buying online.
3. To suggest the changes, the law requires to keep pace with the evolving challenges in mercantile transactions.

Research Methodology

The research relating to “**Consumer concerns in online shopping: A socio-legal study of Kashmir region**” is both doctrinal as well as empirical.

Primary sources include: Data collected through: Questionnaires.

Secondary sources include: Statutory provisions in J&K., India and elsewhere relevant to the study have been analysed. The case laws laid down by the courts and quasi-judicial bodies in India. The journals, surveys both national and transnational have been consulted. Wherever required the laws relevant to issue in the foreign countries and position therein are referred.

Design of the study

The study is divided into following chapters:

Chapter I..... Introduction. The chapter is introductory in nature. It contains the statement of problem, the objectives of the study, the research methodology adopted, and the design of study.

Chapter II..... Development of online shopping in India with special reference to Kashmir region. The chapter traces the development of the online shopping in India and particularly of the Kashmir region.

Chapter III.... Online shopping and consumer: New challenges. The chapter includes the discussion on the challenges faced by the consumer while shopping online.

Chapter IV.....Law and online shopping. The chapter includes the discussion on the relevant law, governing online shopping.

Chapter V..... Impact of online shopping on consumer: An empirical study. The chapter is based on the empirical study done in the university campus. The data has been collected through questionnaires.

Chapter VI..... Conclusion and Suggestions. The chapter includes the conclusion of the whole project assignment and the suggestions based on the study.

Chapter II

Development of online shopping in India with special reference to Kashmir

Online shopping is the process whereby consumers directly buy goods or services from a seller in real-time, without an intermediary service, over the internet. It is a form of electronic commerce. An online shop, e-shop, e-store, internet shop, web store evokes the physical analogy of buying products or services at shopping store such as mall. The process is called business to consumer (B2C) online shopping. When a

business buys business from another business, it is called business to business (B2B) online shopping. The online shopping system is very helpful for where the customer can directly buy the products or items from home through internet connection on mobile or system. By this online shopping items is directly delivered to buyer home. This system helps to choose products faster and easier at one place, this system can also help for saves time of travelling to the sellers place.

2.1 Historical Background

It all began when Michael Aldrich 'invented' online shopping in 1979. Using videotex, a two way message service, it revolutionised businesses. We now know this as e-commerce¹. In 1990, Tim Berners-Lee created the first World Wide Web server and browser in UK. It opened for commercial use in 1991. In 1994 other advances took place, such as online banking and the opening of an online pizza shop by Pizza Hut. During that same year, Netscape introduced SSL encryption of data transferred online, which has become essential for secure online shopping. Also in 1994, the German company Intershop introduced its first online shopping system. In 1995, Amazon launched its online shopping site, and in 1996, eBay appeared. Originally, electronic commerce was identified as the facilitation of commercial transactions electronically, using technology such as Electronic Data Interchange (EDI) and Electronic Funds Transfer (EFT). These were both introduced in the late 1970s, allowing businesses to send commercial documents like purchase orders or invoices electronically. The growth and acceptance of credit cards, automated teller machines (ATM) and telephone banking in the 1980s were also forms of electronic commerce. Another form of e-commerce was the airline reservation system typified by Sabre in the USA and Travicom in the UK. From the 1990s onwards, electronic commerce would additionally include enterprise resource planning systems (ERP), data mining and data warehousing.

In 1990, Tim Berners-Lee invented the World Wide Web browser and transformed an academic telecommunication network into a worldwide everyman everyday communication system called internet/www. Commercial enterprise on the Internet was strictly prohibited by NSF until 1995. Although the Internet became popular worldwide around 1994 with the adoption of Mosaic web browser, it took about five years to introduce security protocols and DSL allowing continual connection to the Internet. By the end of 2000, many European and American business companies offered their services through the World Wide Web. Since then people began to associate a word "ecommerce" with the ability of purchasing various goods through the Internet using secure protocols and electronic payment services.

2.2 Timeline

1979: Michael Aldrich invented online shopping in UK.

1981: Thomson Holidays, UK is first B2B online shopping.

1982: Minitel was introduced nationwide in France by France Telecom and used for online ordering.

1984: Tesco is first B2C online shopping and Mrs Snowball, 72, is the first online home shopper.

1985: Nissan UK sells cars and finance with credit checking to customers online from dealers' lots.

1987: Swreg, an online payment processor that is the best PayPal alternative for global businesses begins to provide software.

1990: Tim Berners-Lee writes the first web browser, World Wide Web, using a NeXT computer UK.

1992: Terry Brownell launches first fully graphical, iconic navigated Bulletin board system online shopping using RoboBOARD.

1994: Netscape, US Computer Services Company releases the Navigator browser in October under the code name Mozilla. Pizza Hut offers online ordering on its Web page. Netscape 1.0 is introduced in late.

¹ <http://purple.ai/the-history-of-online-shopping> (visited on Feb 21, 2017)

1994 SSL encryption that made transactions secure.

1995: Jeff Bezos, CEO of Amazon Inc., USA launches Amazon.com and the first commercial-free 24 hour. Internet-only radio stations, Radio HK and Net Radio in US start broadcasting. EBay is founded by computer programmer Pierre Omidyar as Auction Web in US.

1998: Electronic postal stamps for people residing in US can be purchased and downloaded for printing from the Web.

1998: Alibaba Group is established in China. Alibaba Group is a family of Internet-based businesses which makes it easy for anyone to buy or sell online anywhere in the world

1999: Business.com sold for US \$7.5 million to e-Companies, which was purchased in 1997 for US \$149,000. Business.com helps small-to-medium enterprises discover, compare and purchase products and services to run their businesses.

2000: The dot-com bust.

2001: Alibaba.com achieved profitability in December 2001.

2002: eBay acquires PayPal for \$1.5 billion. PayPal is the faster, safer way to send money, make an online payment, receive money or set up a merchant account.

2003: Amazon.com posts first yearly profit.

2004: DHgate.com, China's first online b2b transaction platform, is established, forcing other b2b sites to move away from the "yellow pages" model.²

2007: Business.com acquired by R.H. Donnelley for \$345 million.³

2009: Zappos.com, an online shoe and apparel store acquired by Amazon.com for \$928 million Retail Convergence, operator of private sale website RueLaLa.com⁴, acquired by GSI Commerce for \$180 million, plus up to \$170 million in earn-out payments based on performance through 2012⁵. GSI Commerce is an eBay company specializing in creating, developing and running online shopping sites for brick and mortar brands and retailers.

2010: Groupon reportedly rejects a \$6 billion offer from Google. Instead, the group buying websites plans to go ahead with an IPO in mid-2011⁶. Groupon, is a deal-of-the-day website that features discounted gift certificates or discount coupons usable at local or national companies.

2011: US e-Commerce and Online Retail sales projected to reach \$197 billion, an increase of 12percent over 2010. Quidsi.com, parent company of Diapers.com, acquired by Amazon.com for \$500 million in cash plus \$45 million in debt and other obligations⁷. GSI Commerce, a company specializing in creating, developing and running online shopping sites for brick and mortar businesses, acquired by eBay for \$2.4 billion.⁸

2.3 Online shopping in India with special reference to Kashmir region

Online Shopping in India has emerged as one of the fastest growing market and now-a-days a most common trend which people is using to buy any assets. With the growth of Internet over the last decade, most of the Businesses have now shifted online and the most successful among them are those who have invested huge amount for opening an Online Shopping Site in India.

1. Amazon.in
2. Filpkart
3. Myntra
4. Snapdeal
5. Jabong
6. Tradus.in
7. Homeshop 18
8. Yebhi.com

² http://www.zwgl.com.cn/article_info.asp?nid=4243 (visited on Feb 21,2017)

³ <http://domainnamewire.com/2007/07/26/rh-donnelley-acquiresbusinesscom-for345m> (visited on Feb 21,2017)

⁴ <http://techcrunch.com/2009/07/22/amazon-buys-zappos> (visited on Feb 21, 2017)

⁵ <http://www.reuters.com/article/idUSBNG538820091027> (visited on Feb 22 , 2017)

⁶ http://www.msnbc.msn.com/id/40499923/ns/business-us_business (visited on Feb 22, 2017)

⁷ www.marketwatch.com/story/amazon-buy-diaperscom-parent-in-545m-2010-11-08 (visited on Feb 23, 2017)

⁸ <http://techcrunch.com/2011/03/28/ebay-to-acquire-gsi-commerce-for-2-4-billion> (visited on Feb 23, 2017)

9. Shopclues

10. Infibeam

Online shopping in India, saw 128% growth in interest from the consumers in the year 2011 to 2012 in comparison to only 40% growth in 2010 to 2011, making 2012 the tipping point for online shopping in India. In terms of product categories, consumer interest on Google search for apparels & accessories (30%) emerged as the second biggest product category after consumer electronics (34%). As mobile internet user base grows in India, mobile phones is also becoming a contributor in the surge for online shopping with Google witnessing 2X growth in number of queries from mobile phones in the year 2011 to 2012. Currently, 30% of all shopping queries in India come from mobile phones. These trends were also validated with the help of an online research conducted by TNS Australia of the internet users in the age group 18 to 50 from Delhi, Mumbai, Kolkata, Bangalore, Ahmedabad Region, Hyderabad & Pune⁹. Online shopping in India is an emerging trend for marketers to promote their merchandise in wide geographical area using internet and the trend looks likely to grow upwards over the coming decade. India is the 5th country in world ecommerce and 2nd country in Asia. India seems to have grasped the ability to shop merchandise through internet. Mobile internet is being enormously responsible for opening up the online world to Indian consumers. There are reports suggesting that by the end of 2013 over 300¹⁰ million Indians will have access to the internet through mobile phone technology and other platforms, about the same amount of people in USA to put that into context. Reports show that out of the millions accessing the internet in India, over 8 million regularly shop through internet. This figure is set to grow exponentially as well. Google is the internet search engine that is predominately used throughout India.

Online shopping, particularly, has assumed tremendous significance in the overall e-commerce in India. It has, in the recent years, gained a huge momentum. The internet has made possible for a seller to open a shop through a web portal, which can be even run from his home, and a consumer to place an order right from his home. The government of India has also long before recognised the need for development of IT industry and information infrastructure as these are indispensable to the growth of an economy. As a corollary, the government, over the last two decades, formulated liberal policies, substantially successful, for the development and growth of IT industry. It is estimated that India will have 100 million online shoppers and the country's e-tailing sector will become a \$15 billion market by 2016, a study said. The annual online shopping growth report was compiled by Forrester Consulting and Google search trends. The number of online shoppers in India is projected to be 35 million in 2014 and it was 8 million in 2012, said Nitin Bawankule, Google India industry director for e-commerce, local and classifieds. "Online shopper's base will grow three times by 2016, and over 50 million new buyers will come from tier I and tier II cities. The confidence to shop online was on the rise as 71% non-buyers from tier I and tier II cities said they plan to shop online in the next 12 months," the study said. The report also projected that 40 million women are estimated to shop online in India by 2016. "India is adding 6 million new internet users every month," said Rajan Ananda, Google India vice president and managing director. A recent study revealed that the number of internet users in India would reach 302 million by December 2014, registering a year-on-year growth of 32% over last year. According to the Google Forrester report women buyers in tier I cities were more engaged in online shopping and outspend men. While 65% of the buyers shop online due to convenience, 64% use online platforms for the range of variety of products and 60% take online buying route to improve social status, Bawankule said. He said the key sectors which will drive the future growth of the e-commerce are baby care products, skincare and cosmetics products and home furnishing. Bawankule, however, mentioned that 66% of the respondents felt that internet speed is acting as a barrier to online shopping. The speed is only 0.5mbps in India compared to 4mbps in China. There are also various key challenges that lie in front of the Indian e-commerce players — 62% of the respondents are not satisfied with the customer services, 67% said they find the current product return process was complicated and expensive and 55% of non-buyers said they have doubts about the products. "The e-tailing industry needs to act now to cater to this strong user growth trend. Improved customer experience

⁹ <http://yourstory.com/2013/01/google-india-study-about-online-shopping/> (visited on Feb 23, 2017)

¹⁰ <http://www.mbaskool.com/business-articles/marketing/7695-is-online-shopping-booming-in-india-an-empirical-study.html>

across all touch points, easy to use mobile apps can create a strong pull for non-buyers to shop online in tier I and tier II cities.¹¹

There are various factors responsible for the boom in online shopping in India and they are as:

- Large percentage of population subscribed to broadband Internet, burgeoning 3G internet users, and a recent introduction of 4G by Reliance JIO in India.
- Explosive growth of Smartphone users, soon to be world's second largest smartphone user base.
- Rising standards of living as result of fast decline in poverty rate.
- Availability of much wider product range (including long tail and Direct Imports) compared to what is available at brick and mortar retailers.
- Competitive prices compared to brick and mortar retail driven by disintermediation and reduced inventory and real estate costs.
- Increased usage of online classified sites, with more consumer buying and selling second-hand goods.
- Evolution of Million-Dollar start-ups like Jabong.com, Saavn, Makemytrip, Bookmyshow, Zomato Etc.

There are many hosting companies working in India but most of them are not suitable for e-Commerce hosting purpose, because they are providing much less secure and threat protected shared hosting. E-Commerce demand highly secure, stable and protected hosting. Cyber security issues of e-commerce business in India would be required to be managed by Indian e-commerce stakeholders in the near future. In fact, Indian government is planning to introduce cyber security breach disclosure norms in India very soon. Recently Target Corporation suffered a cyber-attack that has put it under litigation threat in multiple jurisdictions. Trends are changing with some of e-commerce companies starting to offer SaaS for hosting webstores with minimal onetime costs. There could be various methods of ecommerce marketing such as blog, forums, search engines and some online advertising sites like Google ad words and Ad roll. India has got its own version Cyber Monday known as Great Online Shopping Festival which started in December 2012, when Google India partnered with e-commerce companies including Flipkart, HomeShop18, Snapdeal, India times shopping and Makemytrip. "Cyber Monday" is a term coined in the USA for the Monday coming after Black Friday, which is the Friday after Thanksgiving Day. Most recent GOSF Great Online Shopping Festival was held during Dec 10 to 12, 2014. In early June 2013, Amazon.com launched their Amazon India marketplace without any marketing campaigns. In July, Amazon had said it will invest \$2 billion (Rs. 12,000 crore) in India to expand business, after its largest Indian rival Flipkart announced \$1 billion in funding. Amazon has also entered grocery segment with its Kirana now in Bangalore and is also planning to enter in various other cities like Delhi Mumbai and Chennai and faces stiff competition with Indian Start-ups like onedaycart.com, bazaar cart, big basket etc. Flipkart is also planning to enter grocery segment soon.¹²

Although the trend of e-Commerce has been making rounds in India for 15 years, the appropriate ecosystem has now started to fall in place. The e-Commerce market in India has enjoyed phenomenal growth of almost 50% in the last five years. Key factors driving the growth story of e-Commerce in India include:

- Considerable rise in the number of internet users;
- Growing acceptability of online payments;
- Proliferation of internet-enabled devices;
- Favourable demographics.

The number of users making online transactions in India is expected to grow from 11 million in 2011 to 38 million in 2015. Venture capitalists (VC) and private equity players have demonstrated their faith in the

¹¹ <http://www.gadgetsnow.com/tech-news/Online-shoppers-in-India-to-cross-100-million-by-2016-Study/articleshow/45217773.cms> (both 10 & 11 visited on Feb 23, 2017)

¹² <http://devmantra.com/2015/09/01/e-commerce-and-its-evolution-in-india/> (visited on Feb 24, 2017)

growth of e-Commerce in the country. This is amply substantiated by the significant increase in the total investments (US\$305 million in 2011 against US\$55 million in 2010).¹³

The segment of online retail has evolved and grown significantly over the past few years. Cash-on-delivery has been one of the key growth drivers and is touted to have accounted for 50% to 80% of online retail sales. Players have adopted new business models including stock-and-sell, consignment and group buying; however, concerns surrounding inventory management, location of warehouses and in-house logistics capabilities are posing teething issues.

2.3.1 Online shopping in Kashmir

In the state of Jammu and Kashmir, with the increase in the number of internet users, the state from last six or seven years has witnessed the boom in online shopping particularly in the urban areas including the Srinagar city, Jammu city with its main hubs. The people belonging to other district headquarters and the tehsil headquarters whether rural or urban are transacting through online either for shopping goods or services and or for any other payment like the booking of railway tickets, banking, air tickets, DTH recharge and mobile phone recharges. The state is the northern most part of the India and the internet is still new to this region, only people belonging to education sector, banking, and other business persons are using internet frequently and the other people belonging to other professions are still hesitant towards the use of internet. And resultantly only the younger generations used to buy online few years back. But due to the uncertainties in the Kashmir because of strikes and markets being shut the people prefer to buy online products. Dozens of online stores have been opened by the young entrepreneurs ranging from selling of clothes to selling of dry fruits and even the saffron is available on the online stores of Kashmir. For instance the **Kashmir box**, this is the first social impact market place from Kashmir. This is a community with more than 10,000 artisan families associated to it with a mission to create **BRAND KASHMIR** and to make the local artisans of Kashmir a proud and economically sound artist. Other stores like **Kashmir villa** and **Jammu and Kashmir State online shopping store Helloshoppee.com**. The opening of these kind of online stores in the region of the Kashmir is witness to the fact that the sellers and buyers in Kashmir, shows more or less inclination towards the online shopping.

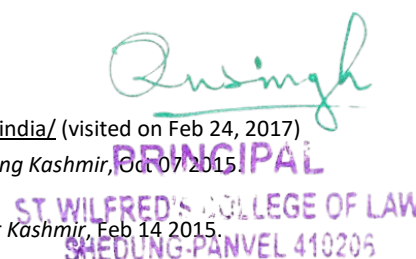
In 2015, the online shopping from major e-commerce companies like Snapdeal and Amazon was made available for rural areas of Kashmir which otherwise was confined to few areas in Srinagar only. However, the companies dispatch the product to customers in the rural areas in Valley through only postal department. "We want to ship our products to each corner of the world with the free return option," said a senior Amazon official over phone. Presently, electronic and clothing items are accessible for shipping in rural areas of Kashmir. "We will make more products accessible to rural areas very soon," said a Snapdeal, customer care executive. The Amazon official said the move has been taken jointly by e-commerce companies and Indian Postal Service.¹⁴

Online shopping in the state has contributed in many ways inter alia the courier service is one of them. Before introduction of online shopping in Kashmir, courier companies were not doing well and at that time only few courier companies were working in the Valley. Booming online shopping in Kashmir has given impetus to the courier business creating job avenues for thousands of unemployed youth in the Valley. As per estimates the courier service is making Rs 20 crore business per annum while it has created job avenues for more than 1000 youth in Kashmir. Currently, 25 courier companies are operating in the Valley.¹⁵

¹³ <http://devmantra.com/2015/09/01/e-commerce-and-its-evolution-in-india/> (visited on Feb 24, 2017)

¹⁴ Editorial, "Online shopping facility now available in rural Kashmir" *Rising Kashmir*, Oct 07 2015.

¹⁵ Editorial, "Online shopping boosts courier services in Kashmir" *Greater Kashmir*, Feb 14 2015.



To mention, the online shopping has become a centre of attraction for Kashmir netizens in Kashmir, with people in offices, public places, homes discussing about the best offers available on various online shopping sites. President, Kashmir Courier Association, Zahoor Qari states that Kashmir valley each day receives 700 shipments ordered by online shoppers. "On an average 450 orders using Cash on Delivery (COD) option and 250 orders via (prepaid payment mode) are received by courier companies to be distributed across the Kashmir region. The advent of technology has further helped the sector to grow and expand. The courier companies state that with online shopping gaining publicity in Kashmir through word of mouth, as a result now people in rural areas are also not shying away to do online shopping. "A year ago, our business was mainly central Kashmir mostly Srinagar centric, but now within a year it has expanded to rural areas of the Valley with people in those places opting for online shopping," said Abid Ahmad, an employee of a courier company.¹⁶

According to the Boston Consultancy Group digital influence study 2013-14¹⁷, online shopping is expected to rise to 14 per cent by 2016 from 6 per cent in 2013. It also said already 25 per cent of travel and tourism-related sales are digitally driven in the country currently.

According to market observers, a fair percentage of young Kashmiris is now-a-days purchasing via internet. Online shopping is on the rise, showing fabulous potential growth throughout the world. Due to the availability of convenience in online shopping youth of Kashmir valley are getting highly attracted toward this modern method of shopping. In today's era of internet proliferation, the prevalence of e-shopping has increased worldwide. Internet has made the transactions smoother, quicker, faster and easier and both the buyers and sellers get benefited by this technology. The growing use of internet in Kashmir valley has created a basis for tremendous prospects for online retailers. A study published in 2016¹⁸ shows that (63.89%) male and 36.11% female online customers were satisfied in Kashmir valley. This research explicitly indicates that online marketer should give more importance on quality, price factor and after sale factor. In this competition era all the online marketers should have to concentrate on the customer's satisfaction to retain the existing customers and have to offer new scheme day by day to attract the new customers. The overall results the study prove that the respondents have perceived online shopping in a positive manner despite the fact that Kashmir is a place where there are continuous disturbances. Despite there is a boom in the online shopping in the region, its phenomenal growth is accompanied by certain challenges:

- Absence of e-Commerce laws.
- Low entry barriers leading to reduced competitive advantages.
- Rapidly changing business models.
- Urban phenomenon.
- Shortage of manpower.
- Customer loyalty.

Despite being trendy, allowing ease and quickness and received with a huge response by consumers both in urban as well as rural areas, online shopping cannot be said to be done. Rather it has become an easy target for the evildoers. Online shopping poses a wide range of challenges from the consumer protection perspective, ranging from invasion of privacy to insecure payments, and to jurisdictional issues.

¹⁶ Ibid;

¹⁷ Editorial, "Online shopping to more than double by 2016: Study" *BGR (ESSEL GROUP)* June 30, 2014

¹⁸ Bhat et al, "CONSUMER BEHAVIOUR TOWARDS ONLINE SHOPPING: AN EMPIRICAL STUDY FROM KASHMIR VALLEY". Available at <http://www.cibtech.org/jet.htm> 2016 Vol. 6 (3) July-September, pp.62-69/Bhat et al

Chapter III

Online Shopping and Consumer: New Challenges

3.1 Consumer

The word consumer is self-explanatory and the literal meaning is "one who consumes" but as against a customer in the market place, a consumer has a wider and broader meaning. In traditional theory the consumer is considered to be well-informed about costs, price and quality of goods. Consumers are individual members of the general public, purchasing or using goods, property or services for private and not for professional purpose.

Consumer can be defined as, an individual who purchases and uses products and services in contrast to manufacturers who produce the goods or services and wholesalers or retailers who distribute and sell them. Adam Smith observed that, "Consumer is the sole end and purpose of all production and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer¹⁹." Anyone who spends money or exchanges articles for goods and services may be called a consumer. He must be protected from unfair trade practices, in order to seek a healthy economy of the country and welfare to the consumer²⁰.

Section 2 (d) of the J&K Consumer Protection Act, 1987 defines Consumer means any person who; (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised, or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.²¹

Section 2(d) of the Indian Consumer Protection Act 1986 defines consumer as ; "consumer" means any person who,— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires [or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires [or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

[Explanation. —for the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]²²

Upon cursory reading, it is clear that, both the definitions are same but, in case of central Act there is an explanation appended to the section and the phrase "*or avails of*" has been added to subsection II of the section 2 (d).

¹⁹ Wealth of nations pg. 172

²⁰ P. Sivaprakasam, "Recent Trends that Reflect the Consumer Protection in India", Indian Consumer Co-operator, Vol.22, No.1, January-March, 1995,

²¹ J&K Consumer Protection Act, 1987 available at http://kashmirdivision.nic.in/PdfDocs/acts_rules/jk_consumer_act_1987.pdf

²² Consumer Protection Act, 1986 available at www.wipo.int/edocs/lexdocs/laws/en/in/in076en.pdf

There is no doubt about the fact that Indian legal system experienced a revolution with the enactment of the Consumer Protection Act of 1986 and subsequently the state of Jammu and Kashmir in 1987. The consumer protection Act at the central level and at the state level were passed by the respective legislatures with avowed objectives. These legislations were intended to provide justice which is; less formal, and involves less paper work, less delay and less expense. The consumer protection law has received wide recognition in India as poor man's legislation, ensuring easy access to justice. However, the legislation simply gives a new dimension to the rights that have been recognised and protected since the ancient period.

The definitions provided by the said legislations benefit the traditional consumer only. While now we are having technocrat consumers who prefer electronic transactions over manual and traditional transactions.

3.1.2 Changing trend from consumer to e-consumer

The most important fact required to be recognised is that the impact of Information technology, particularly internet, has exponentially changed the business. The CPA is mainly traditional and intended to deal with the offline transactions. The impact of the new technological advancements and the massive convergence of e-commerce transactions, have caught the attention of individual consumers, business enterprises, governments and international organizations.²³ Online shopping is a new trend in today's world which is a part of e-commerce and is preferred by almost everyone, who is having access to the internet through mobile or system. It is preferable rather useful because of numerous reasons, say for example, access to the products, availability of diverse products on a single web store which is otherwise not the case in common traditional shopping malls. Now a day's furniture can also be brought by the consumer by placing an online order like the peperry.com, the gadgets of any brand can be easily sold and bought on an online web shop, which may not be accessible otherwise, becomes quite convenient. It acts as an effective mode of entering into transactions, for consumers as well as retailers and has made possible low value cross-border transactions to an extent that could have been unthinkable previously.²⁴

Few developments have altered India's lifestyle more quickly and more completely than the Internet. Online access has enabled people from all walks of life to bring entire libraries, entertainment venues, post offices and financial centres to a workplace, to a desktop or to a shirt pocket. The Internet's largest and most meaningful impact may very well be on the way consumers shop from everything from gifts, gadgets and groceries to clothing, cars, and cruises. The ease and selection that the Internet provides to shoppers has changed the face of retailing. More and more, consumers visit a store's Web site to make their choices before traveling to the store itself; and in a rapidly swelling tide, many shoppers are bypassing the store altogether and ordering online directly from the Web sites of their favourite brands and outlets. Because online stores are open 24 hours a day, seven days a week, and their inventories are often more complete than those of their brick-and-mortar counterparts, the Internet makes it easy for shoppers to compare products within or between stores, to read product reviews from other customers, to access vendor return policies and to find warranty information. Hence a shift from the traditional consumer to the online consumer.

Roger Clarke ²⁵ defines e-commerce as —the conduct of commerce in goods and services with the assistance of telecommunications and telecommunications-based tools. However, there exists no standard definition for the term and different organizations have defined it differently. Yet, nonetheless, a very useful definition is the one by A.R. Lodder²⁶ who defines e-commerce as —commercial activities concerning goods and services as well as any business transaction, where participants are not necessarily at the same physical location and therefore do apply telecommunication means. As said before, e-commerce is, in fact, the act of buying or selling goods, services, or information over an electronic network.

²³ Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

²⁴ Ibid.

²⁵ Clarke, "Electronic Commerce Definitions," available at <http://www.anu.edu.au/people/Roger.Clarke/EC/ECDefns.html>

²⁶ Lodder, "Legal Aspects of Electronic Commerce," available at <http://www.rechten.vu.nl/~lodder/enlist/ec.pdf>

On the Internet, it pertains to a website, which sells products or services directly from the site using a shopping cart or shopping basket system and allows credit card payments. It involves conducting business with the help of the electronic media, making use of the information technology such as Electronic Data Interchange (EDI). The Indian Information Technology Act, 2000, whose object is to offer legal recognition to transactions carried out by electronic means, refers electronic commerce 'to transactions carried out by electronic data interchange and other means of electronic communication which involve the use of alternatives to paper-shaped methods of communication and storage of information. The scope of electronic commerce is wide enough to include not just the actual buying and selling of products, but includes pre-sale and post-sale activities.²⁷

3.2 Challenges

The development in the sphere of internet connectivity has led to the development of e-markets and e-commerce offers consumers products and goods at their doorstep and more consumer exploitation in the form of cyber-crimes and further harassment. These concerns are new challenges that are thrown on the consumer with the revolution in information technology. Consumer protection Act has been in operation for about 30 years. A number of deficiencies and short comings in respect of its operation have come to light due to the change in the business structure to e-commerce, thereby leaving scope for further improvement of the law in order to keep pace with the changing dimensions. The challenges include;

a. Jurisdictional issue

The benefits of e-commerce, for consumers and business alike, have been oft-recognized. The public policy trend in India both at central and state level has been to digitize India, and has been to encourage the growth of e-commerce. Public policy also recognizes the dangers associated with electronic commerce, and to consumers in particular, and there are commensurate initiatives to seek to modernize consumer protection laws. One of the distinctive characteristics of electronic commerce is its borderless nature. Although mail-order and telemarketing transactions have been employed for some time, the rise of electronic commerce has exponentially increased the number of cross-border transactions. International trade, once largely the preserve of businesses, has now come to the consumer. The ability to market and sell products and services from a single site to an unlimited geographic market, and to do so at a low cost, is one of the great advantages flowing from online commerce. It is also one of the major challenges it poses to businesses, consumers and policy-makers. For policy makers, the challenge is therefore to restore a measure of certainty to the marketplace,

And to do so in a way that properly balances the interests of consumers and businesses. One of the key issues in this regard is developing a practicable and reasonably predictable set of rules to determine what jurisdiction's laws will apply to consumer contracts and what courts will have the authority to adjudicate and enforce disputes in this regard.

The connectivity and transmission of data may take place within multiple jurisdictions, and computer servers on which information is hosted or from which it emanates or is received may be located separate from the actual parties to a particular dispute, the parties themselves ultimately are always located in some real, territorially-defined location. Difficulties in ascertaining that particular location, in general or at any particular time, do create practical obstacles. These difficulties cannot, however, either legally or practically justify abdication of regulators' role and authority to protect consumers within their jurisdiction. Clearly, the "real and substantial link" test for the proper assertion of prescriptive jurisdiction will often result in more than one, and perhaps many, jurisdictions being capable of properly asserting authority over conduct that has effects in more than one jurisdiction. It is this fact that suggests the need for clearer prescriptive jurisdictional rule.

b. privacy concerns

²⁷ Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013



Qus Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Roger Clarke presents a useful definition of privacy. He defines it as the interest that individuals have in sustaining a personal space', free from interference by other people and organizations.' Privacy expert Alan Westin defined information privacy as —the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others. It is this form of privacy that new technologies such as the Internet have the potential to threaten the most. Privacy is notoriously difficult to define. Smith et al²⁸ outline four dimensions of consumer privacy concerns: collection of personal information, unauthorized secondary use of personal information, errors in personal information, and improper access to personal information²⁹. In online marketing, these dimensions of concern have been interpreted to refer to the collection of personal information, control over the use of personal data, and awareness of privacy practices and how personal information is used³⁰. Other consumers' concerns focus on unauthorized secondary use and errors in personal information. When those concerns are elicited by the merchant's behaviour, the individual may lose trust in the merchant. Milne and Gordon refer to the proper treatment of consumer information as an "implied social contract" with the customer³¹. When a breach of confidentiality between the organization and the individual occurs, the violation of trust may entitle the victim to compensation. Through the increasing sophistication of data mining tools, consumer database creation and management has become a growing and profitable enterprise. Personal data is now a tradable commodity in capitalist societies, and thus, the free market economy and privacy are inherently at odds with one another. Because digitally stored data can have an indefinite life span, public concern over the ability to control our own information is evident in consumer reluctance to provide personal data to online businesses. With any kind of analogy, the challenge presently applies to countries like India as well. The vast network of computers that makes up the Internet has brought people closer which have facilitated greater communication and commercial activity. It has also made many behaviours actions and communications that were once considered private, less so. This is a new phenomenon created by technology. There is no blanket view of what personal information individuals regard as private. Financial details, sexual preferences and medical histories, for example, may be regarded by most consumers as personal information that should be kept private at all costs. Shopping patterns, address details and family details may be on the next tier and so on. The fact that an organization constructs a detailed personal profile of a user as a result of activity on the Internet may not be a concern for a user as long as they get something for it in return. While shopping online the consumers shopping history and passwords could be compromised by countless prying eyes. Very few things in life are truly private anymore. Online merchants have employed number of different technologies designed to make the shopping experience more pleasant and efficient, with the goal of boosting sales. For example, many online retailers have the option of remembering your credit card information and collect information to get a pretty good idea of what other products you may like to buy. But this typically means you have to give something up in return, usually some amount of privacy. When you return to a website where you may have done business in the past, even just to browse, it often "remembers" your last session. This is done using something known as "cookies," which are pieces of code left on your computer's browser that track the consumers shopping and Web surfing habits. The consumer may also see advertisements on unrelated websites that closely track to search inquiries and other purchases consumer might have made. It's one thing if a consumer is purchasing a pair of sneakers, but someone buying a self-help book on depression may not want that information shared. Also, privacy advocates worry that targeted ads may lead to marketing profiles of online shoppers that reveal too much about us, including personally identifiable data (such as our name, address, Social Security Number, etc.). Any attempt to protect e-consumer's privacy must aim that data collection as little as possible takes place and the data that necessarily must be collected ought to be non-personal, wherever possible. Further,

²⁸ Smith, H. J., Milberg, S., and Burke, S. 1996. Information privacy: Measuring individuals' concerns about organizational practices. *MIS Quarterly*, 20(2): 167-196.

²⁹ Stewart, K. A. and Segars, A. H. 2002. An empirical examination of the concern for information privacy instrument. *Information Systems Research*, 13(1): 36-49.

³⁰ Malhotra, N., Kim, S. S., and Agarwal, J. 2004. Internet Users' Information Privacy Concerns (IUIPC): The Construct, the Scale, and a Causal Model. *Information Systems Research*, 15(4): 336-355.

³¹ Milne, G. R. and Gordon M. E. 1993. Direct mail privacy-efficiency trade-offs within an implied social contract framework. *Journal of Public Policy Marketing*, 12(2): 206-15.

data protection schemes must ensure that where personal data is collected, the data subject is made aware of the collection, its purpose and uses, and has the right to access and correct that data. The data collector must also make sure that the data is kept safe, and is only used and disclosed for the purpose it was collected for. Finally, scheme aiming at providing useful protection of e-consumers must adequately protect e-consumers engaging in cross-border trade and should provide particular protection for sensitive data. For example, when a person buys a product or a good online, he is required to visit a particular website where he is asked to fill in his/her name, address, phone number, date of birth etc. But what is the guarantee to this person against sharing this personal information with a third person. It is said that privacy is not something you realize you have until you have lost it. With rapid changes in technology and e-commerce infrastructure currently being developed, it is important to make decisions today, to ensure our privacy for tomorrow.

c. Insecure on-line payments

With the unassuming growth of internet commerce across the globe including India, a range of new Internet-based payment mechanisms have been invented in the recent times. Almost each of these mechanisms demands the involvement of a third party to serve as an intermediary to the transaction. The intermediary may have a contractual relationship with the buyer, the seller, or both depending on the mechanism of the transaction. In some cases, one party may not even have the knowledge that an intermediary is being used. The chief advantages of online payment mechanism lie in the fact that they are convenient and efficient as it enables a buyer to purchase goods even at his home, using his credit card. However, consumerism requires these e-retailers to give consumers an immediate confirmation of the transaction when an order is placed. The confirmation should contain an acknowledgment of the order; details about the payment made and expected delivery time, and information regarding applicable cancellation rights and procedures. The confirmation should also be printable and able to be stored in an electronic form. These kinds of protective measures become indispensable owing to the fact that online payment services remain largely unregulated and the rights of buyers and sellers are generally controlled by the terms of each provider rather than by law.

d. Delayed delivery

Delay in the delivery of goods continues to remain one of the most common grievances in the consumers, especially when we talk about online shopping. Online business houses do not give any guarantee about the time of delivery. Thus regarded, these web shops should be fixed with responsibility in the context of the services they are supposed to render under the consumer protection laws.

e. complex contractual terms

Another concern, again with regard to the online shopping, is the complexity of contractual terms, which contain terms and conditions favouring the seller. The language used to write these terms and conditions is highly technical and complex, which an ordinary person cannot help understand. They are also tedious which are humanly impossible to read for a common consumer. The buyer is only given an option to agree or not to, thus put in a weak bargaining position. In an online environment, the possibility of minors entering into contracts increases, more so with the increasing usage of online medium among teenagers (read minors here) and their preference to shop online or purchase online goods/services. It becomes crucial for an online business portal to keep such possibility in consideration and qualify its website or form stating that the individual with whom it is trading or entering into the contract is a major.

f. Weak Feedback System



Qu Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Feedback should be the heart and soul of business, both offline and online. In the online business world, particularly online shopping, hardly has any shopping house a strong complaint redressal mechanism. What happens is that these shops only provide an Email Id or a telephone number on their websites. And worse, when it comes to the practicability, most of these web shops fail to respond, thus putting the consumer in trouble.

g. phishing

Phishing, a word produced from 'fishing', refers to the act through which an attacker allures users to visit a fake Website by sending them fake e-mails (or instant messages), and stealthily gets victim's personal information such as user name, password, and national security ID, etc. This information, then, is used for future target advertisements or even identity theft attacks (e.g., to transfer money from victim's bank account)³². In India, especially in online shopping, phishing, which in other words means a criminal activity of stealing someone's personal information for his or her own financial gain, continues to remain one of the most dreaded threats in e-commerce transactions. And perhaps, phishing has made e-commerce distrusted and less attractive to normal consumers.

h. other challenges

- Other challenges include the lack of full disclosure with regards to the total cost of purchase is one of the concerns of online shopping. While it may be easy to compare the base price of an item online, it may not be easy to see the total cost up front as additional fees such as shipping are often not be visible until the final step in the checkout process. The problem is especially evident with cross-border purchases, where the cost indicated at the final checkout screen may not include additional fees that must be paid upon delivery such as duties and brokerage.
- One of the hardest areas to deal with in online shopping is the delivery of the products. Most companies offer shipping insurance in case the product is lost or damaged; however, if the buyer opts not to purchase insurance on their products, they are generally out of luck. Some shipping companies will offer refunds or compensation for the damage, but it is up to their discretion if this will happen. It is important to realize that once the product leaves the hands of the seller, they have no responsibility (provided the product is what the buyer ordered and is in the specified condition).
- It has been also seen that people often order a product from an online store against the payment of cash on delivery. But when the company sends the product to the buyer they refuse to take the product and sometimes ignore the phone calls from the company in response to the order made.
- Recently, one of the new challenge has been added to the list is that, the credibility of the courier boys who are engaged for the delivery of products. It has come to the notice that sometimes they replace the product with other less expensive products, or even they replace the product with the stones or bricks, for their personal gains in order and results in fraud with the consumer.
- Last but not least, the consumers face the challenge of double standard by the web shop while displaying the images of the products on their web shops



Qu Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

³² e <http://research.microsoft.com/en-us/um/people/chguo/phishing.pdf>

Chapter IV Law and Online Shopping

Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1987. There has been a shift from the old brick-mortar store to the online shop (online shopping). It is because of the boom in e-commerce. The existing consumer protection law is almost 30 years old and hence does not cover the new challenges thrown to the consumer. Unfortunately there is no express statute available which could have provided the protection for such modern consumer. However, there are other provisions of law available in India including the State of Jammu and Kashmir that comes to rescue consumer, but no express provision of law while, buying goods and services online. There are number of challenges that are faced by the consumer while transacting online (discussed in chapter IV).

4.1 Existing law in India

E- Contracts

In common parlance the act of buying and selling goods or services for a price through electronic means of communication amounts to e-contract between the seller and the buyer. Since the consumer enters into the e-contract while buying goods or services from the online seller. Electronic contracts are governed by the basic principles of the contract. The Information Technology (amendment) Act 2008 was enacted with one of the objects and reasons is to legalise e-commerce. Section 10 A of the IT Act validates the electronic contracts but that does not mean that such contracts are exclusively dealt under the IT Act.³³ So both the Contract Act and the IT Act needs to be read in conjunction to understand and provide legal validity to e-contracts.

Stamping of contracts is yet another issue. An instrument that is not appropriately stamped may not be admissible as evidence unless the necessary stamp duty along with the penalty has been paid. But payment of stamp duty is applicable in case of physical documents and is not feasible in cases of e-contracts. However, as the payment of stamp duty has gone online and e-stamp papers are available, it can become a possibility later that stamp duty might be asked on e-contracts as well. The other crucial issue is the consent and the way offers are accepted in an online environment. In a click wrap and shrink wrap contract, the customers do not have any opportunity to negotiate the terms and conditions and they simply have to accept the contract before commencing to purchase. Section 16(3) of the Contract Act³⁴ provides that where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. So, in cases of dispute over e-contracts the entity carrying out the e-commerce will have the onus to establish that there was no undue influence. Further, section 23³⁵ of the Contract Act provides that the consideration or object of any agreement is unlawful when it is forbidden by law, or is of such a nature that if permitted, it would defeat the provisions of any law; or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as

³³ Dr Farooq Ahmad, Cyber law in India (New Era Publications 5th edn., reprint 2015). pg.215.

³⁴ Indian Contract Act, 1872.available at lawcommissionofindia.nic.in/1-50/report13.pdf

Ibid;



immoral or opposed to public policy. Since there is jurisdictional dilemma while transacting online, the mere principles of contact is not sufficient. There has to be clear provision governing the e-contracts.

Data Protection

Security of the information provided during the online transaction is a major concern. Under section 43A of the IT Act the “Reasonable practices and procedures and sensitive personal data or information Rules, 2011³⁶” have been proposed, which provide a framework for the protection of data in India. Data can be personal, which has been defined as “any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person.” The data can also be sensitive and a sensitive personal data consists of password, financial information, physical, physiological and mental health condition, sexual orientation, medical records and history and biometric information. The entity collecting data should have a privacy policy in place, should always obtain consent from the provider of sensitive information and maintain reasonable security practices and procedures. Unauthorized access to personal information and any misuse of such personal information should be checked by the online goods/service providers. Also, the intermediary must not knowingly host or publish any prohibited information and if done, should remove them within 36 hours of its knowledge. *In Consim Info Pvt. Ltd v. Google India Pvt. Ltd*³⁷, the Delhi Court Google had extended the argument that being search engine, they cannot control the fact whether some website, any advertisement given on their site is genuine or fraud. The court then observed that though the intermediary, Google, cannot be made liable for infringement arising out of a third party’s actions since it is not possible to always check every advertisement posted online; however, it was said that as per section 3(4) of the aforesaid Intermediaries Guidelines, Google had to act upon it within 36 hours of receipt of such complaint, failing which it may be held liable. This issue is also in no way different from the issues time and again raised by the public at large in other than e-commerce when their phone numbers are given by banks etc. for tele marketing and other unwanted calls and SMS from business groups. This issue can very well be handled alleging the wrong doer for deficiency in services and unfair trade practices under Consumer Protection Act.

Delivery of goods and services management

It is important to always keep consumer protection issues in consideration in e-commerce. The Consumer Protection Act, 1986 governs the relationship between consumers and goods & service providers and there are no specific provisions related to online transactions. Liability for a goods/service provider arises when there is “deficiency in service” or “defect in goods” or occurrence of “unfair trade practice”. The CPA specifically excludes from within scope any service rendered free of cost. So, if only the actual sale is taking place in the online medium, the users will be considered as consumers under the CPA. The goods/service providers may be asked to remove defects/deficiencies, replace the goods, return the price already paid, compensate and discontinue the unfair trade practice or the restrictive trade practice and not repeat them

Advertisement

Advertising is an important and legitimate means for a seller to awaken interest in his products. For long, advertisements were regulated by the courts, government, tribunals, or police that depended upon the nature of each case. Additionally, absence of a single comprehensive legislation created a lot of confusion in terms of a proper code to follow by the industry and the authority to regulate or guide the pattern of advertising. In 1985, the Advertising Standards Council of India (“ASCI”), a non-statutory tribunal, was

³⁶ Govt. of India, Notification 11th April, 2011 (Ministry of information technology: Department of Information Technology)

³⁷ 2013 (54) PTC 578 (Mad)

established that created a self-regulatory mechanism of ensuring ethical advertising practices. ASCI entertained and disposed of complaints based on its Code of Advertising Practice ("ASCI Code"). On certain occasions, however, the ASCI orders were set aside by courts as ASCI being a voluntary association was considered usurping the jurisdiction of courts when it passed orders against non-members. Gradually, the ASCI Code received huge recognition from the advertising industry. The warnings issued by ASCI to the advertisers against the misleading advertisements were gradually being accepted by the advertisers and the advertisements were actually stopped being aired or were modified significantly to comply with the prescribed ASCI Code. The advertisements should make truthful and honest representations and avoid false and misleading claims, should not be offensive to public decency or morality, not promote products which are hazardous or harmful to society or to individuals, particularly minors, observe fairness in competition keeping in consumer's interests and avoid obscene or harmful publication and indecent representation of women.

But this does not have authority to punish anyone. Amendment in the consumer protection act 2002³⁸ had added a clause unfair trade practice which is specifically meant for misleading ads and works well on e-commerce purchases also.

Jurisdiction

The other crucial issue is the consent and the way offers are accepted in an online environment. In a click wrap and shrink wrap contract, the customers do not have any opportunity to negotiate the terms and conditions and they simply have to accept the contract as is offered to them before commencing to purchase. Section 16(3) of the Indian Contract Act provides that where a person proposes certain terms to the other and other part accepts the same by clicking on it, is bound by all the terms so proposed by the proposer. It is said and argued by some groups that under these online environments, party offering is in a position to dominate the will of another, and the transaction appears on the face of it to be unconscionable. Hence this is a disadvantageous position of a person who accepts. But we must not forget that the basic principal of contract act is that acceptance should be unconditional even if both the parties are present face to face. So it hardly makes any difference as far as acceptance of proposal is concerned. One can always avoid clicking if not satisfied. The only point while dealing the matter under Consumer Protection Act shall have to be decided is the jurisdiction of the court keeping in view the question –where the cause of action arises. In net purchasing, since proposal and acceptances are made on computer sitting at their places, jurisdiction at both the places has been considered by the forums /commissions under Consumer Protection Act as practiced by now and supported by various judgments too. Hence consumers can easily reach to consumer forums in cases of default on the part of seller or service provider.

4.2 Initiatives at the global level

4.2.1 Organisation for economic co-operation and development OCED³⁹

E-commerce has evolved dramatically since 1999, when the OECD Council adopted the first international instrument for Consumer Protection in the Context of Electronic Commerce ("1999 Recommendation") (see also⁴⁰). On 24 March 2016, the OECD Council revised this instrument and the Recommendation of the Council on Consumer Protection in E-commerce ("the revised Recommendation") now addresses new and emerging trends and challenges faced by consumers in today's dynamic e-commerce marketplace. As called for in the 1998 OECD Ministerial Conference on The Borderless World: Realising the Potential of Global Electronic Commerce, the 1999 Recommendation set forth the core characteristics of consumer

³⁸ Consumer protection (amendment) Act, 2002 available at consumershelpline.info/CPA-1986.pdf

³⁹ The OCED's committee on consumer policy represents the main forum for regulation of e-commerce at global level.

⁴⁰ Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International Journal of Law and Policy Review vol.2 no.1 2013

protection for electronic commerce: fair and transparent business and advertising practices, information about businesses, goods and services, transactions, as well as adequate dispute resolution and redress mechanisms, payment protection, privacy, and education. Responding again to the invitation of Ministers at the 2008 Ministerial on the Future of the Internet Economy, the OECD undertook a review of the 1999 Recommendation to consider how to further encourage consumers to embrace the opportunities of e-commerce. Beginning with a conference held in 2009 in Washington, D.C., on Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy, the OECD Committee on Consumer Policy (CCP) researched and analysed trends and policy challenges arising in mobile and online payments, the purchase of intangible digital content products, and participative e-commerce. This work outlined the many benefits that e-commerce had brought over a decade to consumers, including wider choices at competitive prices, as well as easy-to-use and more secure payment options. The work however also pointed to the higher complexity of the online environment and related risks for consumers. It showed that, for example, consumers' understanding of their rights and obligations was often challenged when they make purchases through non-traditional payment mechanisms, such as mobile phone bills or pre-paid cards, or when they acquire digital content products, such as apps or e-books. The OECD Consumer Policy Toolkit further highlighted that when consumers use mobile devices for e-commerce in an "on the go" context, their tendency to take decisions based on heuristic techniques is exacerbated. Unauthorised charges, misleading and fraudulent commercial practices also remain problematic. Following its thorough review, in 2014, the Committee agreed to revise the 1999 Recommendation to address the challenges identified and achieve effective consumer protection while stimulating innovation and competition in the market. Key new developments in e-commerce addressed by the revised Recommendation include:

Non-monetary transactions. Consumers increasingly acquire "free" goods and services in exchange for their personal data and these transactions are now explicitly included in the scope of the Recommendation. Governments and stakeholders are called upon to consider ways to provide redress to consumers experiencing a problem with such transactions.

Digital content products. Transactions involving digital content often come with technical or contractual access or usage limitations and many consumers have difficulty understanding their rights and obligations. New language has been added to clarify that consumers should be provided with clear information about such limitations, as well as on functionality and interoperability.

Active consumers. Current e-commerce business models increasingly blur the boundaries between consumers and businesses, with consumers playing a participatory role in product promotion and development, and entering into transactions with other consumers. The scope of the Recommendation has therefore been broadened and it now encompasses business activities that facilitate consumer-to-consumer transactions. A new provision is added to ensure that consumer endorsements are truthful and transparent.

Mobile devices. The growing use of mobile devices for e-commerce brings a number of technical challenges to making information disclosures effective (e.g. on small screens) and can constrain record keeping by consumers. Two new provisions are included to highlight the need to account for the technological limitations or special characteristics of the device used.

Privacy and security risks. Consumer data is at the core of many e-commerce services and elevates privacy and security risks. The Recommendation recalls the need to address these risks consistent with other OECD instruments and includes two new provisions highlighting specific protections of particular importance for B2C e-commerce.

Payment protection. Recognising that the level of payment protection can vary depending on the type of payment mechanism used, the Recommendation calls on governments and stakeholders to work together to develop minimum levels of consumer protection across payment mechanisms.

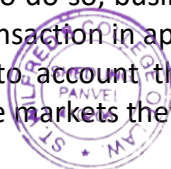
Product safety. In a number of countries, a range of unsafe products, which have been prohibited from sale or recalled from the offline retail market, are available in e-commerce. A new provision is added to ensure that unsafe products are not offered to consumers online, and that businesses cooperate with the relevant authorities to address the problem. In addition, the Recommendation updates several other provisions. One relates to the essential role of consumer protection authorities and the need to enhance their ability to protect consumers in e-commerce and to exchange information and co-operate in cross-border matters.

A. Transparent and Effective Protection

1. Consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.
2. Governments and stakeholders should work together to achieve such protection and determine what changes may be necessary to address the special circumstances of e-commerce, including for children and vulnerable or disadvantaged consumers. In so doing, they should take into account the insights from information and behavioural economics.

B. Fair Business, Advertising and Marketing Practices

3. Businesses engaged in e-commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices as well as the general principle of good faith.
4. Businesses should not make any representation, or omission, or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair. This includes the general impression likely conveyed to consumers by the representation or practice as well as implied factual misrepresentations conveyed through features such as the good or the service's name, words, pictures, audio and/or video and the use of disclaimers that are hidden, hard to notice or to understand.
5. Businesses should not misrepresent or hide terms and conditions that are likely to affect a consumer's decision regarding a transaction.
6. Businesses should not use unfair contract terms.
7. If contract terms stipulate monetary remedies in the case of a consumer's breach of contract, such remedies should be proportionate to the damage likely to be caused.
8. Businesses should not engage in deceptive practices related to the collection and use of consumers' personal data.
9. Businesses should not permit others acting on their behalf to engage in deceptive, misleading, fraudulent or unfair practices and should take steps to prevent such conduct.
10. Businesses should be able to substantiate any express or implied representations for as long as the representations are maintained, and for a reasonable time thereafter.
11. Businesses should comply with any express or implied representations they make about their adherence to industry self-regulatory codes or programmes, privacy notices or any other policies or practices relating to their transactions with consumers.
12. Businesses should not attempt to restrict a consumer's ability to make negative reviews, dispute charges, or consult or file complaints with government agencies and other complaint bodies.
13. Advertising and marketing should be clearly identifiable as such.
14. Advertising and marketing should identify the business on whose behalf the marketing or advertising is being conducted where failure to do so would be deceptive.
15. Businesses should ensure that any advertising or marketing for goods or services are consistent with their actual characteristics, access and usage conditions.
16. Businesses should ensure that advertised prices do not misrepresent or hide the total cost of a good or a service.
17. Endorsements used in advertising and marketing should be truthful, substantiated and reflect the opinions and actual experience of the endorsers. Any material connection between businesses and online endorsers, which might affect the weight or credibility that consumers give to an endorsement, should be clearly and conspicuously disclosed.
18. Businesses should take special care in advertising or marketing that is targeted to children, vulnerable or disadvantaged consumers, and others who may not have the capacity to fully understand the information with which they are presented.
19. Even where not obligated to do so, businesses should consider offering consumers the possibility to withdraw from a confirmed transaction in appropriate circumstances.
20. Businesses should take into account the global nature of e-commerce and consider the various regulatory characteristics of the markets they target.



Principals
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

21. Businesses should not exploit the special characteristics of e-commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms.

22. Businesses should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial messages, whether by e-mail or other electronic means. When consumers have indicated, at any time, that they do not want to receive such messages, their choice should be respected.

23. Businesses should not offer, advertise or market, goods or services that pose an unreasonable risk to the health or safety of consumers. Businesses should co-operate with the competent authorities when a good or a service on offer is identified as presenting such a risk.

24. Businesses should consider the needs of persons with disabilities when designing e-commerce platforms and online payment systems.

C. Online Disclosures

General Principles

25. Online disclosures should be clear, accurate, easily accessible and conspicuous so that consumers have information sufficient to make an informed decision regarding a transaction. Such disclosures should be made in plain and easy-to-understand language, at a relevant time, and in a manner that enables consumers to retain a complete, accurate and durable record of such information.

26. When more than one language is available to conduct a transaction, businesses should make available in those same languages, all information necessary for consumers to make an informed decision regarding a transaction. All information that refers to costs should indicate the applicable currency, unless it is apparent from the context.

27. Businesses should take into account the technological limitations or special characteristics of a device or platform, while providing all necessary information.

Information about the Business

28. Businesses engaged in e-commerce with consumers should make readily available information about themselves that is sufficient to allow, at a minimum:

- i) Identification of the business;
- ii) Prompt, easy and effective consumer communication with the business;
- iii) Appropriate and effective resolution of any disputes that may arise;
- iv) Service of legal process in domestic and cross-border disputes; and
- v) Location of the business.

29. This information should include the legal name of the business and name under which it trades; its principal geographic address; an e-mail address, telephone number or other electronic means of contact; appropriate domain name registration information for web sites that are promoting or engaging in commercial transactions with consumers; and any relevant government registration or license information.

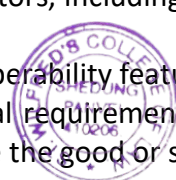
30. When a business publicises its membership in any relevant self-regulatory programme, business association, dispute resolution organisation or other body, the business should provide sufficient information to enable consumers to easily contact such body. Businesses should provide consumers with easy methods to verify that membership, access the relevant codes and practices of the organisation, and take advantage of any dispute resolution mechanisms offered by the organisation.

Information about the Goods or Services

31. Businesses engaged in e-commerce with consumers should provide information describing the goods or services offered that is sufficient to enable consumers to make informed decisions regarding a transaction.

32. Depending on relevant factors, including the type of good or service, this should include information such as:

- i) Key functionality and interoperability features;
- ii) Key technical or contractual requirements, limitations or conditions that might affect a consumer's ability to acquire, access or use the good or service;



Praveen
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

- iii) Safety and health care information; and
- iv) Any age restrictions. Information about the Transaction.

33. Businesses engaged in e-commerce should provide information about the terms, conditions and costs associated with a transaction that is sufficient to enable consumers to make an informed decision regarding a transaction. Consumers should be able to easily access this information at any stage of the transaction.

34. Businesses should provide consumers with a clear and full statement of the relevant terms and conditions of the transaction.

35. Where applicable and appropriate given the transaction, such information should include the following:

- i) Initial price, including all fixed compulsory charges collected and/or imposed by the business;
- ii) Information on the existence of variable compulsory and optional charges collected and/or imposed by the business when they become known by the business and before consumers confirm the transaction;
- iii) Notice of the existence of other routinely applicable costs to the consumer that are collected and/or imposed by third parties;
- iv) Terms, conditions, and methods of payment, including contract duration, recurring charges, such as automatic repeat purchases and subscription renewals, and ways to opt out from such automatic arrangements;
- v) Terms of delivery or performance;
- vi) Details of and conditions related to withdrawal, termination or cancellation, after-sales service, return, exchange, refunds, warranties and guarantees;
- vii) Privacy policy; and
- viii) Information on available dispute resolution and redress options.

D. Confirmation Process

36. Businesses should ensure that the point at which consumers are asked to confirm a transaction, after which time payment is due or they are otherwise contractually bound, is clear and unambiguous, as should the steps needed to complete the transaction, especially for new payment mechanisms.

37. Businesses should provide consumers with an opportunity to review summary information about the good or service, as well as any delivery and pricing information before consumers are asked to confirm a transaction. They should enable consumers to identify and correct errors or to modify or stop the transaction, as appropriate.

38. Businesses should not process a transaction unless the consumer has provided express, informed consent to it.

39. Businesses should enable consumers to retain a complete, accurate and durable record of the transaction, in a format compatible with the device or platform that the consumers used to complete the transaction.

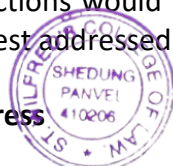
E. Payment

40. Businesses should provide consumers with easy-to-use payment mechanisms and implement security measures that are commensurate with payment-related risks, including those resulting from unauthorised access or use of personal data, fraud and identity theft.

41. Governments and stakeholders should work together to develop minimum levels of consumer protection for e-commerce payments, regardless of the payment mechanism used. Such protection should include regulatory or industry-led limitations on consumer liability for unauthorised or fraudulent charges, as well as chargeback mechanisms, when appropriate. The development of other payment arrangements that may enhance consumer confidence in e-commerce, such as escrow services, should also be encouraged.

42. Governments and stakeholders should explore other areas where greater harmonisation of payment protection rules among jurisdictions would be beneficial and seek to clarify how issues involving cross-border transactions could be best addressed when payment protection levels differ.

F. Dispute Resolution and Redress



Principals
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

43. Consumers should be provided with meaningful access to fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden. These should include out-of-court mechanisms, such as internal complaints handling and alternative dispute resolution (hereafter, “ADR”). Subject to applicable law, the use of such out-of-court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress. Internal complaints handling

44. The development by businesses of internal complaints handling mechanisms, which enable consumers to informally resolve their complaints directly with businesses, at the earliest possible stage, without charge, should be encouraged.

45. Consumers should have access to ADR mechanisms, including online dispute resolution systems, to facilitate the resolution of claims over e-commerce transactions, with special attention to low value or cross-border transactions. Although such mechanisms may be financially supported in a variety of ways, they should be designed to provide dispute resolution on an objective, impartial, and consistent basis, with individual outcomes independent of influence by those providing financial or other support.

Redress

46. Businesses should provide redress to consumers for the harm that they suffer as a consequence of goods or services which, for example, are defective, damage their devices, do not meet advertised quality criteria or where there have been delivery problems. Governments and stakeholders should consider how to provide redress to consumers in appropriate circumstances involving non-monetary transactions.

47. Governments and stakeholders should work towards ensuring that consumer protection enforcement authorities and other relevant bodies, such as consumer organisations, and self-regulatory organisations that handle consumer complaints, have the ability to take action and obtain or facilitate redress for consumers, including monetary redress.

G. Privacy and Security

48. Businesses should protect consumer privacy by ensuring that their practices relating to the collection and use of consumer data are lawful, transparent and fair, enable consumer participation and choice, and provide reasonable security safeguards.

49. Businesses should manage digital security risk and implement security measures for reducing or mitigating adverse effects relating to consumer participation in e-commerce.

H. Education, Awareness and Digital Competence

50. Governments and stakeholders should work together to educate consumers, government officials and businesses about e-commerce to foster informed decision making. They should work towards increasing business and consumer awareness of the consumer protection framework that applies to their online activities, including their respective rights and obligations, at domestic and cross-border levels.

51. Governments and stakeholders should work together to improve consumers’ digital competence through education and awareness programmes aimed at providing them with relevant knowledge and skills to access and use digital technology to participate in e-commerce. Such programmes should be designed to meet the needs of different groups, taking into account factors such as age, income, and literacy.

52. Governments and stakeholders should make use of all effective means to educate consumers and businesses, including innovative techniques made possible by global networks.⁴¹

4.2.2 International Chamber of Commerce (ICC)

ICC is the world’s largest, most representative business organization. Its member companies come from 130 countries. Companies from all sectors and from all parts of the world have issued universal standards

⁴¹OECD Recommendation: “Consumer Protection in E-commerce: OECD Publishing, Paris,” 24 March, 2016.

for international advertising practices through ICC since 1937. ICC's rules are regularly reviewed and adjusted to meet public sensitivities and the demands of new technologies. In 1996, the ICC released —Guidelines on Advertising and Marketing on the Internet|. These guidelines were meant to serve as a recommendation and, in light of experience acquired, the ICC presented hereafter an updated version of the 1996 Guidelines due to new developments in this area in 1998. Those guidelines apply to all marketing and advertising activities on the Internet for the promotion of any form of goods or services. They set standards of ethical conduct to be observed by all involved with advertising and marketing activities on the Internet⁴².

The guidelines intend to fulfil, inter alia, the following objectives:

- a. to improve the public confidence in advertising and marketing provided over the new interactive systems;
- b. to safeguard optimal freedom of expression for advertisers and marketers;
- c. to minimize the need for governmental and/or inter-governmental legislation or regulations;
- d. to meet reasonable consumer privacy expectations.

In 2011, the International Chamber of Commerce (ICC) has published updated Guidelines on Marketing and Advertising using Electronic Media that address recent developments in the field of digital media and other technologies. The guidelines, which were prepared by the ICC Commission on Marketing and Advertising, cover the use of telephone, SMS/MMS, digital radio and television as new marketing vehicles for selling products worldwide⁴³.

The new guidelines include important guidance on advertising to children — a rapidly expanding market on the Internet — and uphold the basic principle that advertisers and marketers in general should not exploit the inexperience or credulity of children. ICC's expanded guidelines aim to:

- increase public confidence that marketing and advertising material provided over the new interactive systems is legal, decent and honest;
- safeguard an optimum of freedom of expression for advertisers and marketers;
- provide practical and flexible solutions;
- minimize the need for governmental and/or inter-governmental legislation or regulations;
- Meet reasonable consumer privacy expectations.

Contents include:

- Responsible advertising to children
- Respect for public groups
- Data collection
- Unsolicited commercial communications
- Respect for the potential sensitivities of a global audience

The Guidelines on Marketing and Advertising using Electronic Media, formerly called ICC Guidelines on Advertising using the Internet, were first issued in 1996 and revised in 1998 with the growth of the Net.

4.2.3 International Consumer Protection and Enforcement Network (ICPEN)

⁴² Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

⁴³ <https://iccwbo.org/media-wall/news-speeches/icc-issues-new-guidelines-on-marketing-and-advertising-using-electronic-media/>

An organization composed of consumer protection authorities from over 60 countries, whose aim is to: Protect consumers' economic interests around the world, Share information about cross-border commercial activities that may affect consumer welfare, encourage global cooperation among law enforcement agencies.

ICPEN is a global network of consumer protection authorities which engages in dispute resolution and encourages cooperation between law enforcement agencies for disputes arising from commerce across international borders. ICPEN does not handle individual consumer Complaints; however, consumers may report their complaints about cross-border transactions with foreign companies using a specially devised website www.econsumer.gov. The complaints are then accessible to certified government agencies in ICPEN member countries, which may use this information to investigate suspect companies and individuals, uncover new scams, and spot trends in fraud⁴⁴. The econsumer.gov website may also help consumers who choose to resolve their disputes by means of ADR mechanisms. [Econsumer.gov](http://econsumer.gov) is a portal for consumers to report complaints about online and related transactions with foreign companies. At econsumer.gov, you can report international scams and learn about other steps you can take to combat fraud. Your complaints help consumer protection agencies around the world spot trends and work together to prevent international scams⁴⁵.

Today, consumer protection agencies in 36 countries participate in econsumer.gov. To respond to the challenges of internet fraud and improve consumer confidence, econsumer.gov began in April of 2001 to gather and share cross-border e-commerce complaints. The total no. of Econsumer.gov complaints received from January 01 through Dec 31 2016 = 14,431⁴⁶.

The project has two components:

A public website that allows consumers to make cross-border fraud complaints. It's currently available in English, French, German, Korean, Japanese, Polish, Spanish, and Turkish.

A secure econsumer.gov website that allows law enforcement around the world to share and access consumer complaint data and other investigative information. The secure website is hosted through the Consumer Sentinel Network platform by the U.S. Federal Trade

The mandate of the ICPEN Network is to share information about cross-border commercial activities that may affect consumer interests and to encourage international cooperation among law enforcement agencies in this scope. Thanks to its global reach the Network is able to better target the problems faced nowadays by consumers around the world. The long term goals of the Network are⁴⁷:

- a) To generate and share information and intelligence on consumer protection issues;
- b) To share best practices in legislative and enforcement approaches to consumer protection;
- c) To take action to combat cross-border breaches of consumer protection laws;
- d) To facilitate effective cross-border remedies;
- e) To identify and promote measures for effective consumer protection enforcement;

⁴⁴ Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

⁴⁵ <https://www.econsumer.gov/AboutUs#crnt> (last modified on Mar 13, 2017)

⁴⁶ <https://www.econsumer.gov/en/FileAComplaint#crnt> (last modified on Mar 13, 2017)

⁴⁷ <https://www.icpen.org/for-consumer-experts/what-we-do> (last modified on Mar 13, 2017)

f) To promote and encourage wider participation and cooperation with other consumer protection enforcement organisations.

4.2.4 United Nations and Consumer Protection

The United Nations Guidelines for Consumer Protection are a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems. Furthermore, the Guidelines assist interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their economic, social and environmental circumstances; they also help promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. The Guidelines were first adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and

Social Council in resolution 1999/7 of 26 July 1999, and revised and adopted by the General Assembly in resolution 70/186 of 22 December 2015. The United Nations Conference on Trade and Development promotes the Guidelines and encourages interested Member States to create awareness of the many ways in which Member States, businesses and civil society can

Promote consumer protection in the provision of public and private goods and services.

Member States should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. A level of protection for consumers using electronic commerce that The protection of consumer privacy and the global free flow of information. Besides this it was also laid down that; Businesses should provide complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions. Businesses should ensure easy access to this information, especially to the key terms and conditions, regardless of the means of technology used. Another guideline was laid down in context of the privacy is that, the Businesses should protect consumers' privacy through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection and use of their personal data.⁴⁸

4.3 Position in European Union, United Kingdom and United States of America

In order to improve and support the growth of the electronic market in European Union, a need was felt to build trust and confidence among businesses on one hand, and most importantly, among consumers on the other hand. In order to see e-consumers enjoy the full benefits of the internet technology, it was imperative to avoid inconsistencies in the overall regulation. Thus, to ensure a sound legal and regulatory framework for electronic commerce, the European Union framed rules and policies in the form of directives to protect the e-consumer in electronic contracts. The Directives passed from time to time concern Distance Selling, E Commerce Data Protection etc. These directives have proved very effective in protecting the consumer in the digitalized market, not only within the Union but pertaining to cross-border transactions also. For cross border disputes outside European Union, it joins hands with the international network ICPEN to ensure the safety of its e-consumers.

Moreover, the Union encourages the litigants to resolve disputes through the Alternative Dispute Resolution Mechanisms (ADR). In United Kingdom, e-consumers are both protected by the traditional laws and some exclusive online regulations. The traditional laws include the sale of Goods act, 1979, Consumer Protection Act, 1987, Consumer Credit Act, 1974 etc. and the Unfair Terms in Consumer Contract Regulations, 1999. Online regulations are largely based on the European Union Directives which include the 2002 Electronic Commerce Regulations, the Consumer Protection (Distance Selling) Regulations 2000 and the Electronic Signatures Regulations 2002 and the Data Protection Act 1998. In the United States of America (USA), a range of laws both at the federal and state levels regulate consumer affairs. Among them are the Federal Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, Fair Credit Billing Act, and the Gramm-Leach-Bliley Act. Federal consumer protection laws are mainly enforced by the Federal Trade Commission and the U.S. Department of Justice. USA being a developed country is

⁴⁸ http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

quite advanced in remedying the online consumer problems. USA being a member of econsumer.gov has, to a great extent, succeeded in providing its e-consumers protection from a number of threats which are imminent on e-commerce.⁴⁹

4.4 Consumer Protection in Jammu and Kashmir and India: a comparative analysis.

In India the Consumer Protection Act of 1986 was enacted with an objective

1. To provide better protection of the interests of the Consumers;
2. To make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes;
3. To provide effective and efficient safeguards to the consumers against various types of exploitations and unfair dealings;

The Indian Consumer Protection Act, 1986 simply enshrines the following rights apart from the objectives mentioned above and they are as:

- (a) The right to be protected against the marketing of goods which are hazardous to life and property;
- (b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices;
- (c) The right to be assured, wherever possible access to variety of goods at competitive prices;
- (d) The right to be heard;
- (e) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumer; and
- (f) The right to consumer education.

Consumer Protection Act has been in operation for about 30 years. A number of deficiencies and shortcomings in respect of its operation have come to light thereby requiring amendments thrice, still leaving scope for further improvements.

The state of J&K enjoys the special status under the Indian Constitution and by virtue of this status, the state enacts its own Act in 1987. The Jammu and Kashmir Consumer Protection Act, 1987. The Act was enacted with an intent to safeguard the consumer and protect the consumer from the unfair trade practices and exploitations which assumes numerous forms such as adulteration of food, spurious drugs, dubious hire purchase plans, high prices, poor quality, deficient services, hazardous products, black marketing and many more. This is indeed a highly piece of social welfare legislation. Unlike other laws, which are basically punitive or preventive in nature, the provisions of the Act are compensatory. The Act was enacted in consonance with the Indian Consumer Protection Act, 1986. Hence there is no distinction between the two, apart from the scope.

The state Act of 1986, despite being in verbatim with the central legislation is not at par with the central legislation. For instance, the central Act sets out to protect the consumer through a hierarchy of quasi-judicial bodies at district, state and central level, the State Act provides for only at two levels i.e. the divisional and state level. Even after the amendment in 2011 there is no clear mention of the pecuniary jurisdiction when the claim of valuation lies over 50 lacs, the definition of "service" was included by virtue of the amendment in 2002, however there is no mention of word 'service' in the important explanations appended to section (2). The most important fact to recognise the impact of information technology, particularly internet, has exponentially changed the business. The Act 1987 is mainly traditional and intended to deal with the offline transactions. Undoubtedly not the least, there is a plethora of errors in the drafting of various provisions of the Act. That becomes visible on plain reading. Examples of the provisions can be section 2(1) (d), section 10 (a) and many more. The Act is in need of radical change. So as to meet the requirements in order to protect the consumer.

The development in the sphere of internet connectivity has led to the development of e-markets and e-commerce offering consumer's products and goods at their doorstep and more consumer exploitation in the form of cyber-crimes and further harassment. The state has the primary responsibility to protect the consumer's interests and rights through appropriate policy measures, legal structure and administrative framework by virtue of being a welfare state. The consumer protection Act, 1986 at the central level and

⁴⁹ Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International Journal of Law and Policy Review vol.2 no.1 2013



PRINCIPAL
SR. WILFRED COLLEGE OF LAW
SHEDUNG-PANVEL 410206

the J&K consumer protection Act 1987 were enacted to provide protection of the interests of the consumers and for the purpose of establishment of consumer councils and forums and other authorities for the settlement of the consumer disputes and for the matter connected therewith. The central Act was amended three times and the State Act was amended two times to make the acts more effective but even that there were a few lacunas and nuances that were not incorporated. Several short comings have been noticed while administering the various provisions of the said Acts. However at the central level the new consumer protection Bill 2015 that has been introduced in the monsoon session of the parliament seeks to replace the old Act. The primary motivation to replace the old law with a new one is to modernise the law with respect to the development of new markets and to further widen the ambit and scope of the law to incorporate nuances so that the big companies cannot use them as loopholes to exploit the consumers and to further increase the accountability of the companies. The new bill seeks to make manufacturers liable for any injury attributed to the consumer or death of a consumer or property damage and get them sentenced for life. The new law assumes significant focus as there is growing concern over the safety of consumer products especially after Maggi controversy where in the consumers were duped for a considerable amount of time. The key feature of the bill includes the establishment of an exclusive agency called the Central consumer protection Authority, which will protect and enforce the rights of consumers. The authority will intervene wherever necessary to prevent consumer exploitation arising from unfair trade practices, the authority has conferred the power of *Suo moto* on the agency of starting the proceedings against the manufacturers on its own which is otherwise not provided in the old Act. The bill envisages imposing a fine of up to Rs 10 lacs on those who issue misleading advertisements of food products. Minister of consumer affairs, Ram Vilas Paswan explains the rationale behind the new bill that *"misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose a new challenges to the consumer protection hence, there was a need to modernise the act to address the situation effectively."*

Unfortunately there is no such thing in the state of J&K. the Act in the state if not obsolete but definitely is an archaic law that is purely anachronistic full of lacunas. There is no law governing the online shopping which is day by day growing at the tremendous pace leaving the consumers at the whims of the sellers/manufacturers. There is no protection provided, neither in the old Act nor same has been included through the amendments and no efforts like that of bill of 2015 at the central level has been tabled in the state of J&K. Information technology (Amendment) Act 2008 somehow governs the contracts which are electronic in nature and the act has been made applicable to the state of J&K. But the IT Act does not provide the protection for the consumer while shopping online, there is ambiguity in order to determine the jurisdiction in case of the dispute arising out of the e- contract, and there is privacy concern and every likelihood of the exploitation of the consumer, there is a complexity which required to be brought in the ambit of law. So as to provide the protection, safety and proper safeguards to the consumer preferring the online shopping. The law will in turn encourage the growth of e-commerce, which is well established across the globe. The fact that the world is a global village is one the attributes of the E-commerce, the distinctive feature of globalization. The daily trade across the globe happened to be through electronic data interchange (E-contracts). Hence the transactions, reports and the issues generated by the automatic data process, having considerable bearing on the smooth and extensive growth of international trade and the domestic trade.

Briefly highlighting the short comings in the J&K Consumer Protection Act,1987 there is the utmost need to review the Act and brought the changes accordingly. So that there will be no ambiguity in the jurisdiction as to where to file the complaint and against whom, there will be no more privacy violations and there will be no more complexities while shopping online.



Qu Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Chapter V

Impact of online shopping on consumer: An empirical study

Consumer protection is a socio-economic programme to be pursued by the government as well as the business. Since the satisfaction of the consumer is in the interest of both, in this context, the government, however, has a primary responsibility to protect the consumers' interests and rights through appropriate policy measures, legal structure and administrative framework.

The state of Jammu and Kashmir enacted, the Jammu and Kashmir Consumer Protection Act, 1987 in the next following year after the center. The state Act has been passed on the same lines, in consonance with the central Act. Both the legislations are mainly traditional and were intended to deal with offline mercantile transactions.

Modern technological developments have made a great impact on the quality, availability, and safety of goods and services. Technology has fundamentally changed the way the businesses are handled by society including consumers. The impact of the new technological advancements and the massive convergence of e-commerce transactions, have caught the attention of individual consumers, business enterprises, governments and international organizations. Over the past decade, e-commerce has increasingly provided an alternative for buyers and sellers to transact. The global presence of internet has enabled such businesses to bypass the traditional intermediaries in the domestic jurisdictions, while being able to access global markets. The wider use of internet (increase in internet users) has grown at exponential rates, which has encouraged the growth of online shopping a form of e-commerce. Online shopping is the process whereby consumers directly buy goods or services from a seller in real-time, without an intermediary service, over the Internet. It is a form of electronic commerce. The act of buying or selling goods, service or information is preferred by almost everyone who has access to internet. It allows a consumer to place an order for goods or services from the comfort of his living room and certainly is more convenient than driving to a store, while offering a virtually array of choices and the ability to compare prices. Since 1991, with the advent of economic reforms in India and the consequent opening of the economy with a view to integrate with the global economy, the need to facilitate international trade both through policy and procedure reforms became the foundation stone of India's trade and fiscal policies. E-commerce as part of the information technology became widely used in the world trade in general and Indian economy in particular. In all of this advancement, however, consumer protection can't be overlooked, the fact that, in addition, with revolution in information technology newer kinds of challenges are thrown on the consumer like cyber- crimes, plastic money etc., which affect the consumer in a bigger way. Hence without a confident consumer, there can't be no e-commerce.

Consumer protection Acts has been in operation for about 30 years. A number of deficiencies and short comings in respect of its operation have come to light, thereby requiring amendments twice, still leaves scope for further improvements. Because Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1987. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. There is, therefore, a need to modernise the said Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

There is a growing concern over the safety of the consumer products. There is no law governing the online shopping, which is growing at the tremendous pace leaving the consumers at the whims of the sellers/manufacturers. There is no protection provided in the Act of 1987 against the daily challenges faced by the consumer while shopping online. The daily trade, domestically or globally happened to be through

electronic data interchange (EDI), transactions through e- contracts. Hence the transactions, reports and the issues generated by the automatic data process, having considerable bearing on the smooth and extensive growth of trade. Information Technology (Amendment) Act, 2008 recognizes the legal validity of electronic contracts. But the IT Act, does not provide the protection for the consumer while shopping online, there is ambiguity in terms of jurisdiction in case of the dispute arising out of the transaction while shopping online, there is a privacy concern with every likelihood of exploitation of the consumer, other problems include complex contractual terms, delayed delivery, insecure payment method, weak feedback, phishing and many more other possible concerns.

Participants and Sample Size

I randomly selected 80 students from various departments of the Central University of Kashmir to respond to the questions with respect to the study. The students were mostly from Srinagar, Anantnag, Baramulla, Ganderbal, Shopian, Budgam and Kupwara. The students were of the age group between 18-24 years including both females and males.

Materials

Questionnaire was used as a material to know the response and suggestions from the participants.

Design

The design was mixed model with type of information requested, type of preferences, type of concerns, type of websites and type of recommendations including the suggestions.

Procedure

Participants were given a questionnaire, designed in accordance with the study. Each participant was required to fill the questionnaire according to their experience and understanding while buying online.

Results of the study

- 1. People who prefer to shop online:** The majority of the people (85%) prefer to shop online over the (15%) people who doesn't prefer to shop online. This simply shows that people are inclining more and more towards the e-commerce. Fig.1 and table.1 given below represents the study:



Qus Singh
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

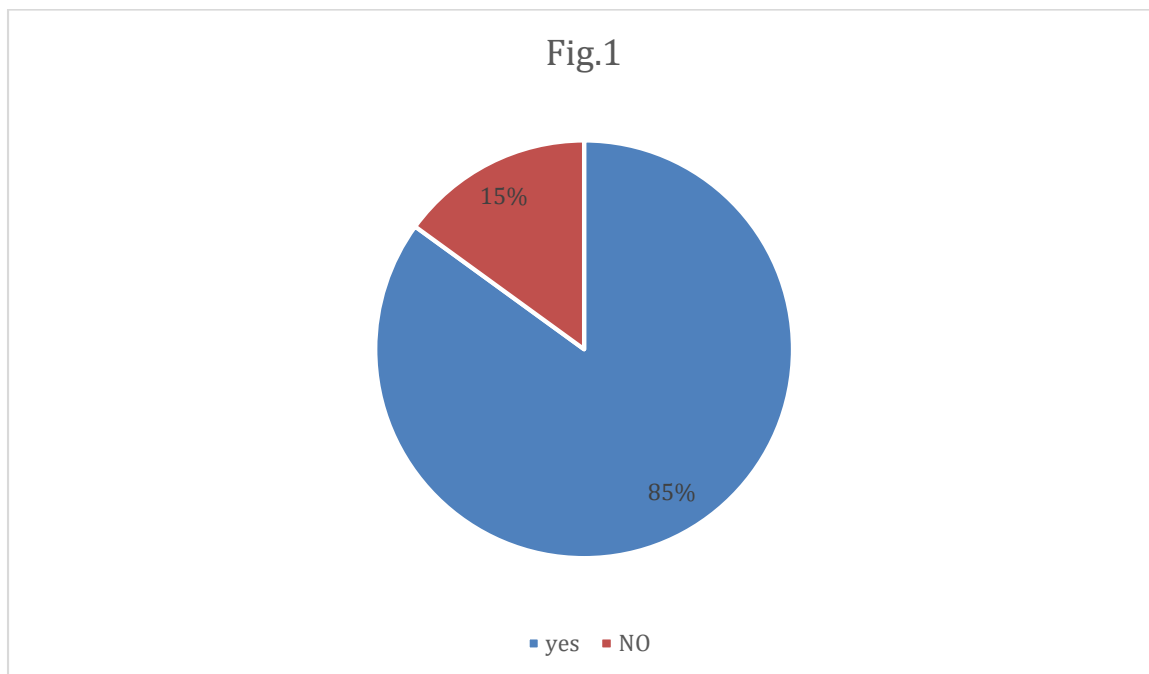


Table. 1

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Yes | 68 | 85% |
| No | 12 | 15% |
| Total | 80 | 100% |

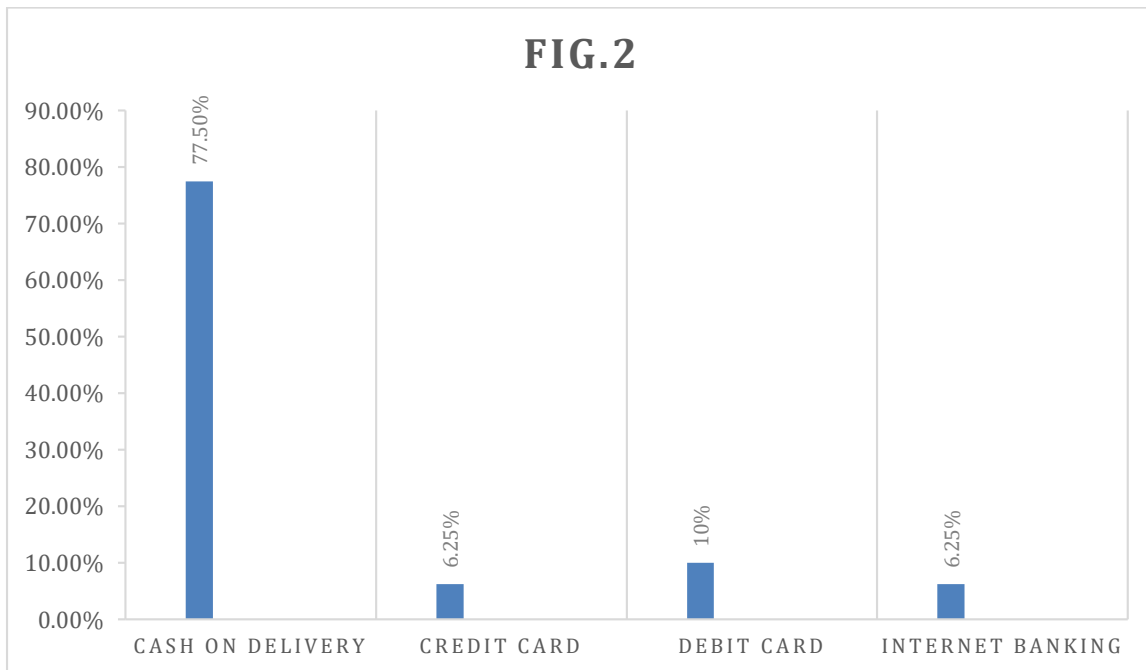
2. Methods used by the people while buying online: People use a variety of means for payment of price while buying online, which includes debit card, credit card, internet banking and cash on delivery. It is clear from the study that most of the people prefer the mode of cash on delivery (77.5%), followed by debit card (10%), credit card (6.25%) and internet banking by (6.25 %) Fig.2 and table.2 represents the study.

Table.2

| Response | No. of People | Percentage |
|------------------|---------------|-------------|
| Debit Card | 08 | 10% |
| Credit Card | 05 | 6.25% |
| Cash on delivery | 62 | 77.50% |
| Internet Banking | 05 | 6.25% |
| Total | 80 | 100% |




PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206



3. Trust of the people while buying online: The study reveals that people are sceptical about online shopping because of many concerns. Most of the people does have a kind of trust but they keep being careful while buying online (72.50%), followed by the people who are confident enough to buy online, they accounts for (10%), and (8.75%) are the people who are fully confident while buying online and (8.75%) are those people who don't trust at all. Fig.3 and table.3 represents the study.

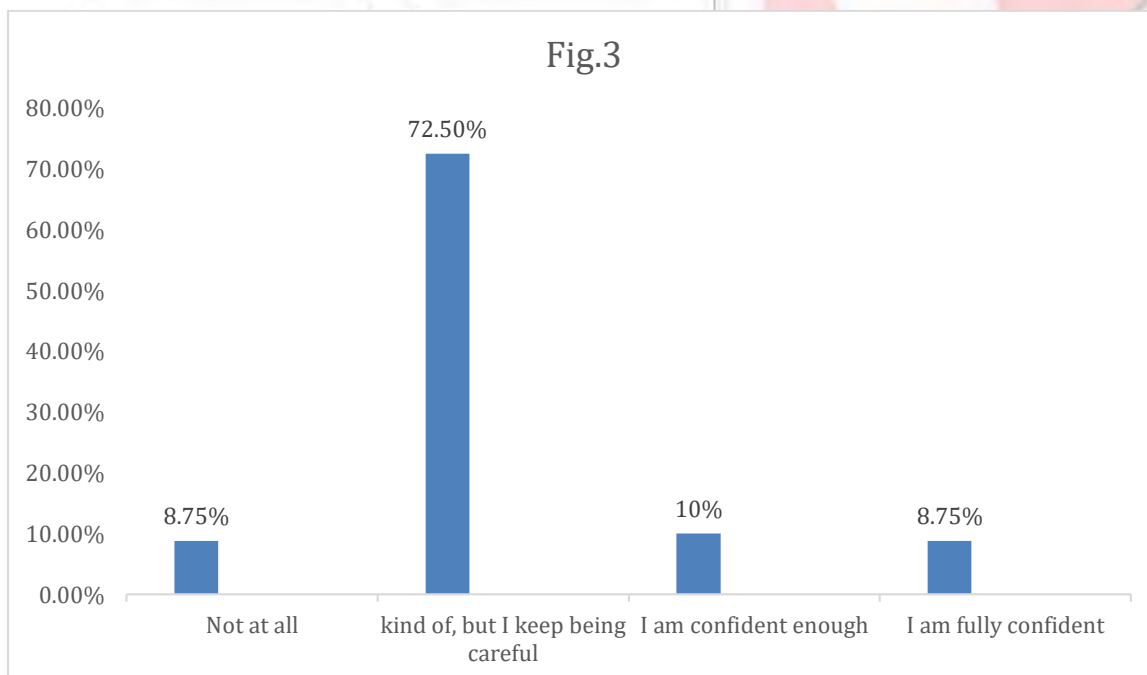


Table.3

| Response | No. of people | Percentage |
|-----------------------|---------------|------------|
| Kind of, but careful | 58 | 72.50% |
| Not at all | 07 | 8.75% |
| I am confident enough | 08 | 10% |
| I am fully confident | 08 | 8.75% |

| | | |
|--------------|-----------|-------------|
| Total | 80 | 100% |
|--------------|-----------|-------------|

4. Online stores preferred by people for shopping: the participants were asked to name the website/online store from which they prefer to shop. The study revealed that Flipkart and amazon are the top most online store where from people of Kashmir love to buy, with an equal share of (31.25%) and followed by Snapdeal (21.25%) and Myntra (16.25%). Fig.4 and table.4 given below represents the study.

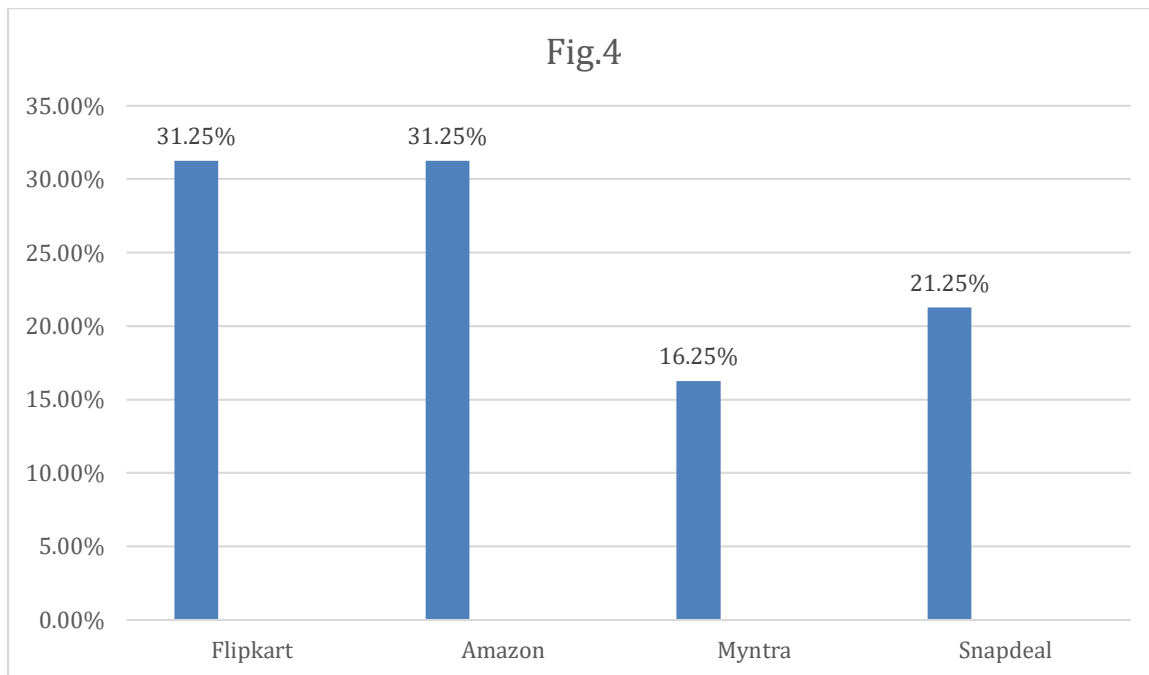


Table.4

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Flipkart | 25 | 31.25% |
| Amazon | 25 | 31.25% |
| Snapdeal | 17 | 21.25% |
| Myntra | 13 | 16.25% |
| Total | 80 | 100% |

5. Key concerns while buying online: There are many key concerns that sometime stops a buyer from buying online. People feel different concerns, such as insecure payment of method is felt by (8.75%) as a concerns that stops them from buying online, likewise (6.25%) of the people expressed that there is no legal protection under J&K Consumer Protection Act, 1987. (12.5%) of the people expressed the delayed delivery as a concern that stops them from buying online and (10%) of the people reflected that there is no guarantee that goods would correspond to that of the description given on the website. However there was unanimity among 62.5% people who opted all of the above. Fig.5 and table.5 given below represents the study.




PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

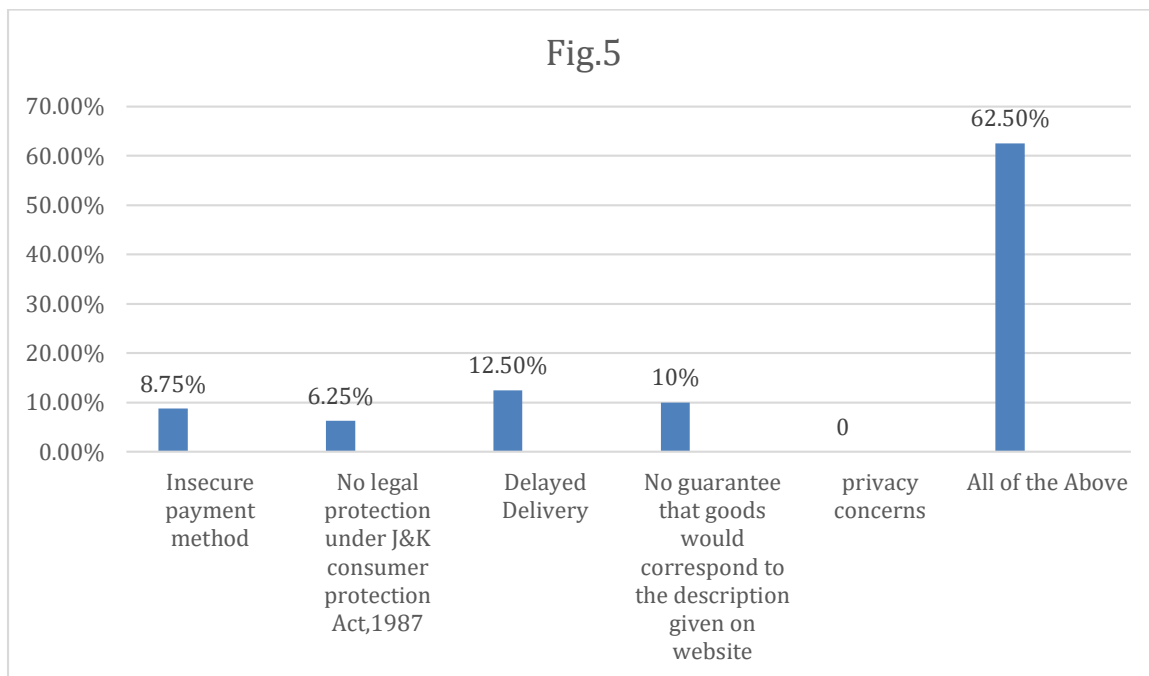


Table.5

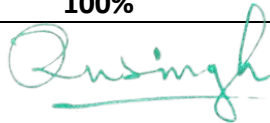
| Response | No. of people | Percentage |
|---|---------------|-------------|
| Insure payment method | 07 | 8.75% |
| No legal protection in J&K | 05 | 6.25% |
| Delayed Delivery | 10 | 12.50% |
| No guarantee of correspondence with description | 08 | 10% |
| Privacy concerns | 0 | 0 |
| All of the above | 50 | 62.50% |
| Total | 80 | 100% |

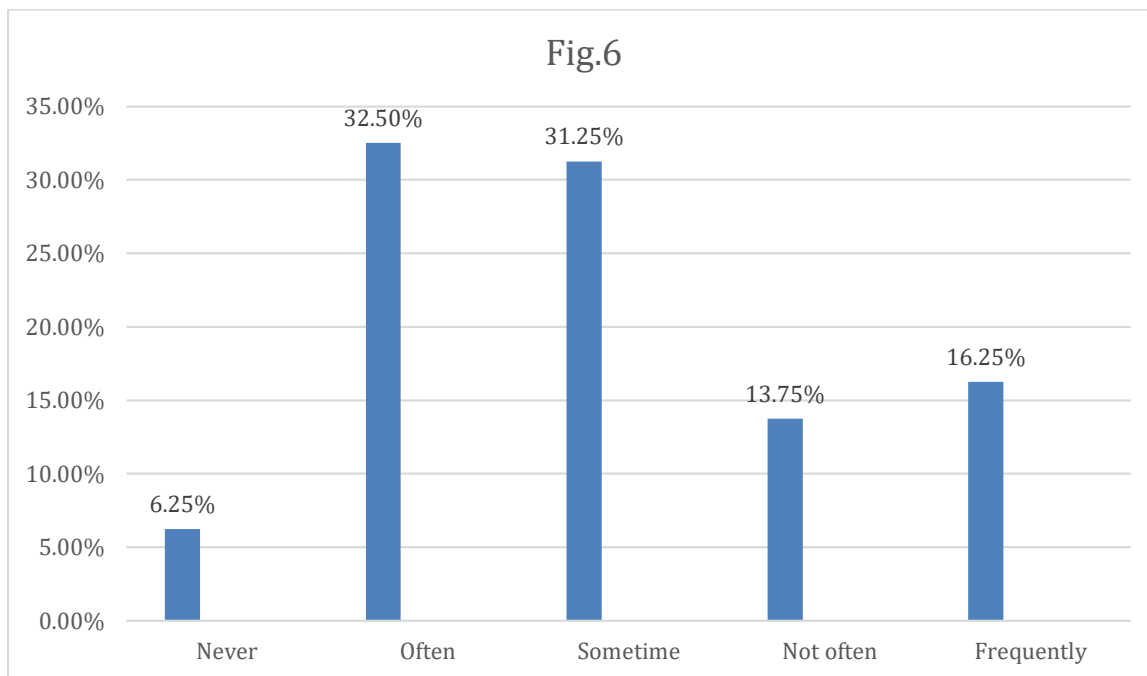
6. **Delivery of goods :** When asked do you agree that the delivery of goods is on time, different people expressed divergent views, (32.5%) of the people agree that there are 'often' delivery of goods on time followed by (31.5%) people who agree that 'sometime' there is the delivery of goods on time and (13.75%) are those people who feel that the delivery of goods on time are 'not often' and (16.75%) are those people, who feel the delivery of goods on time is 'frequently'. Whereas (6.25%) are those people who feel that the delivery of goods is 'never' on time. Fig.6 and table.6 given below represents the study.

Table.6

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Never | 05 | 6.25% |
| Often | 26 | 32.50% |
| Sometime | 25 | 31.25% |
| Not often | 11 | 13.75% |
| Frequently | 13 | 16.25% |
| Total | 80 | 100% |




PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206



7. Contract should be based on negotiations: Usually there is a standard form of contract while transacting online, the ecommerce lacks the option of bargain between seller and the buyer, in order to arrive at the consensus. (63.75%) of the people are in favour of traditional contract based on negotiations, whereas (36.25%) of the people favours the standard form of contract while buying online. Fig.7 and table.7 given below represents the study.

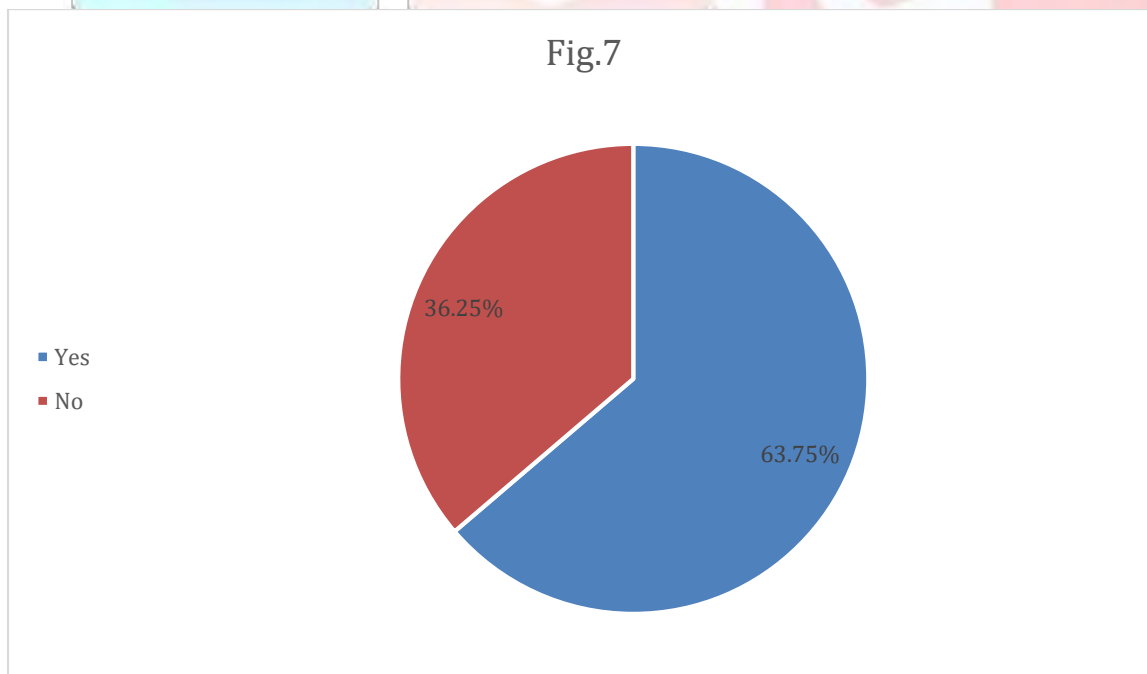


Table.7

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Yes | 51 | 63.75% |
| No | 29 | 36.25% |
| Total | 80 | 100% |

Singh
PRINCIPAL

8. Jurisdiction in case of dispute: There is a jurisdictional dilemma in case there is a dispute because transactions happen to be from computers through internet. The server may be located in one country and the buyer and seller in two different countries. The people hold different opinions with

respect to jurisdiction. 52.50% people expressed that the dispute resolution body should be located in buyers place (where the delivery takes place) followed by the 25% people who feel that there should be agreed jurisdiction between the parties in the contract and 21.25% people hold the view that the dispute resolution body should be located at anywhere the law is applicable and 1.25% people believe that it should be the sellers place. Fig. 8 and table.8 given below represents the study.

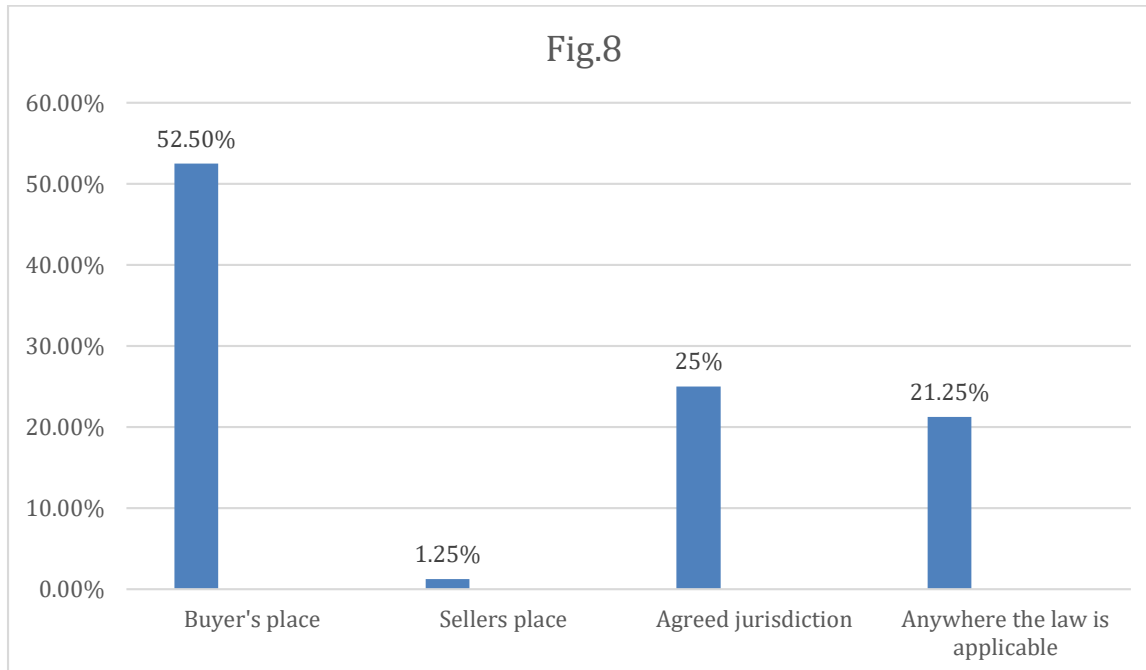


Table.8

| Response | No. of people | Percentage |
|--------------------------------|---------------|-------------|
| Buyer's place | 42 | 52.50% |
| Seller's place | 01 | 1.25% |
| Agreed jurisdiction | 20 | 25% |
| Anywhere the law is applicable | 17 | 21.25% |
| Total | 80 | 100% |

9. Disclosure of personal information: There is a growing concern of privacy, it is believed that in coming years the data information will be the valuable asset in the world driven by information and technology. Online stores require from the buyers to submit the personal information like the gender, email ID's, phone numbers etc. before purchasing any product. (66.25%) of the people feel that disclosure of personal information should not be a prior condition for purchasing online, whereas (33.75%) of the people don't bothers. Fig.9 and table.9 given below represents the study.




PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

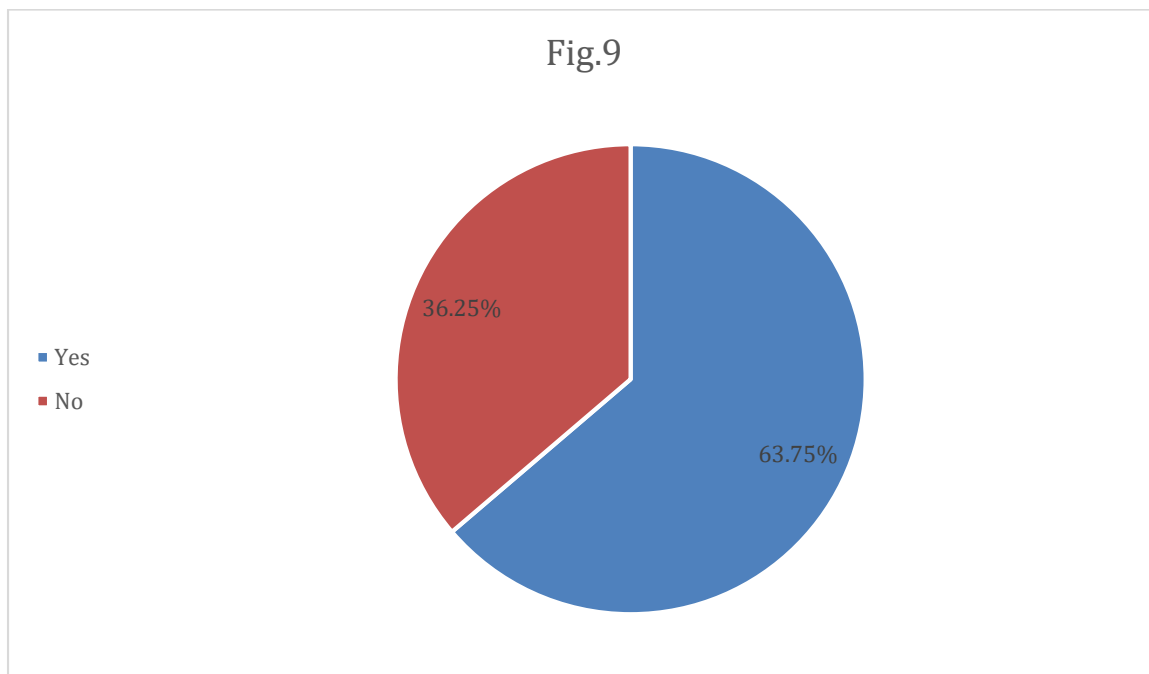


Table.9

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Yes | 53 | 63.75% |
| No | 27 | 36.25% |
| Total | 80 | 100% |

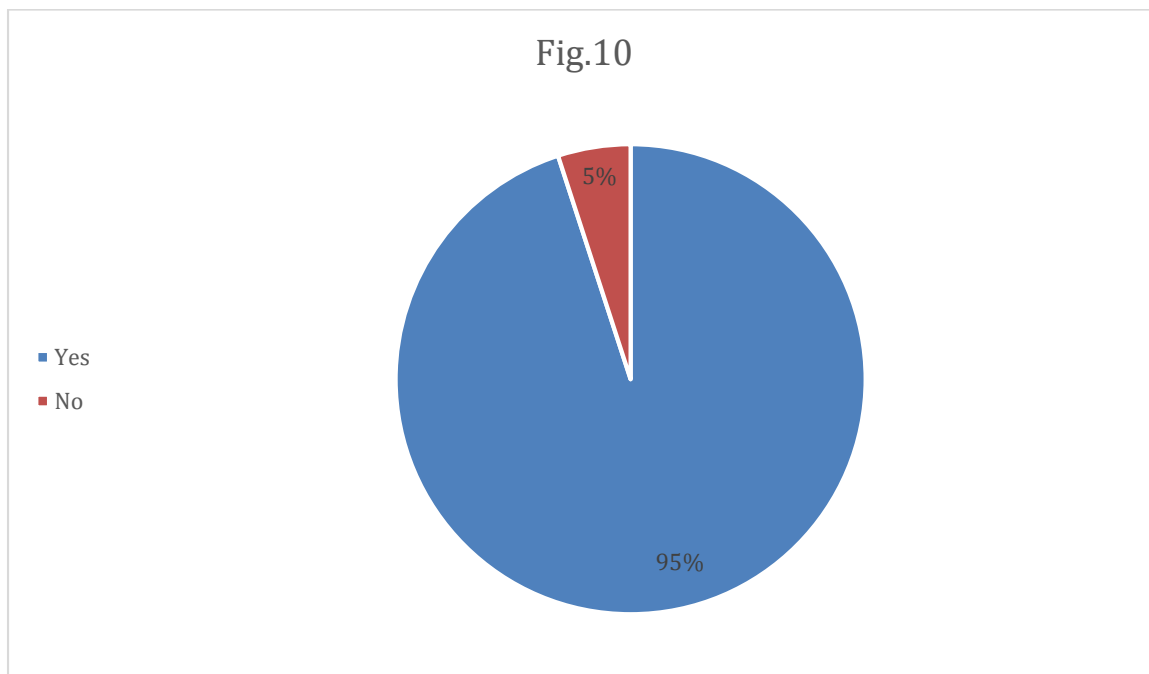
10. Tracing of information by online stores: It has been highlighted that the information of the buyers are sold to the companies and no room of privacy are being left. For instance the company from U.S.A knows the tastes and preferences of the consumers here in Kashmir. The information tracing is evident from the auto fill mechanism, which means that the information is being transferred from one web portal to other. 95% of the people believe that the web store shall not trace the information without the permission of the consumers, whereas 5% of the people have no issues with respect to the tracing and sharing of information by the online web stores. Fig.10 and table.10 given below represents the study.

Table.10

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Yes | 76 | 95% |
| No | 04 | 5% |
| Total | 80 | 100% |



PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206



11. Consumer satisfaction while buying online: The satisfaction is the subjective hence differs from person to person. (42.5%) of the people are sometimes satisfied while shopping online, followed by (30%) of the people who are often satisfied and (11.25%) are frequently satisfied followed by (11.25%) who are not often satisfied while buying online and (5%) are those people who are never satisfied while shopping online. Fig.11 and table.11 given below represents the study.

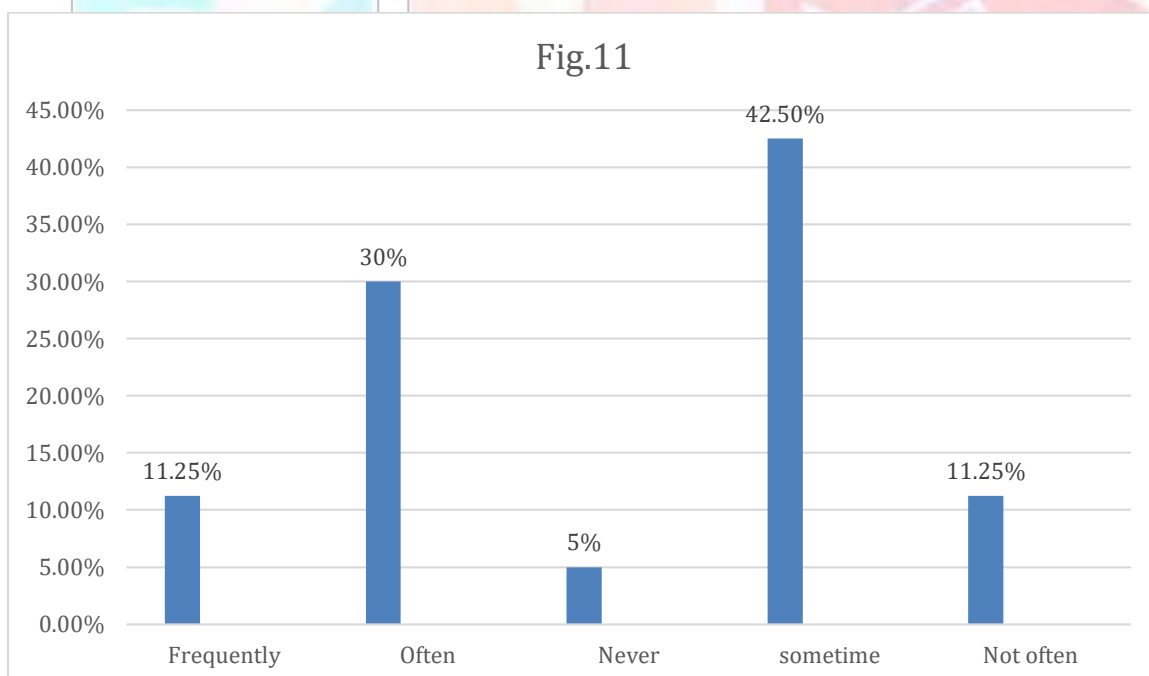
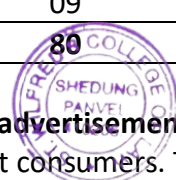


Table.11

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Frequently | 09 | 11.25% |
| Often | 24 | 30% |
| Never | 04 | 05% |
| Sometime | 34 | 42.5% |
| Not often | 09 | 11.25% |
| Total | 80 | 100% |

12. Responsibility for alluring advertisements: Alluring advertisements is a growing concerns which are used to entrap the innocent consumers. These are used as a means to sell the products which are not



PRINCIPAL

of merchantable quality. (76.25%) of the people are of the view that online stores should be held liable for alluring advertisements, whereas (23.75%) of the people hold the view that the online stores should not be held liable for alluring advertisements. Fig.12 and table.12 given below represents the study.

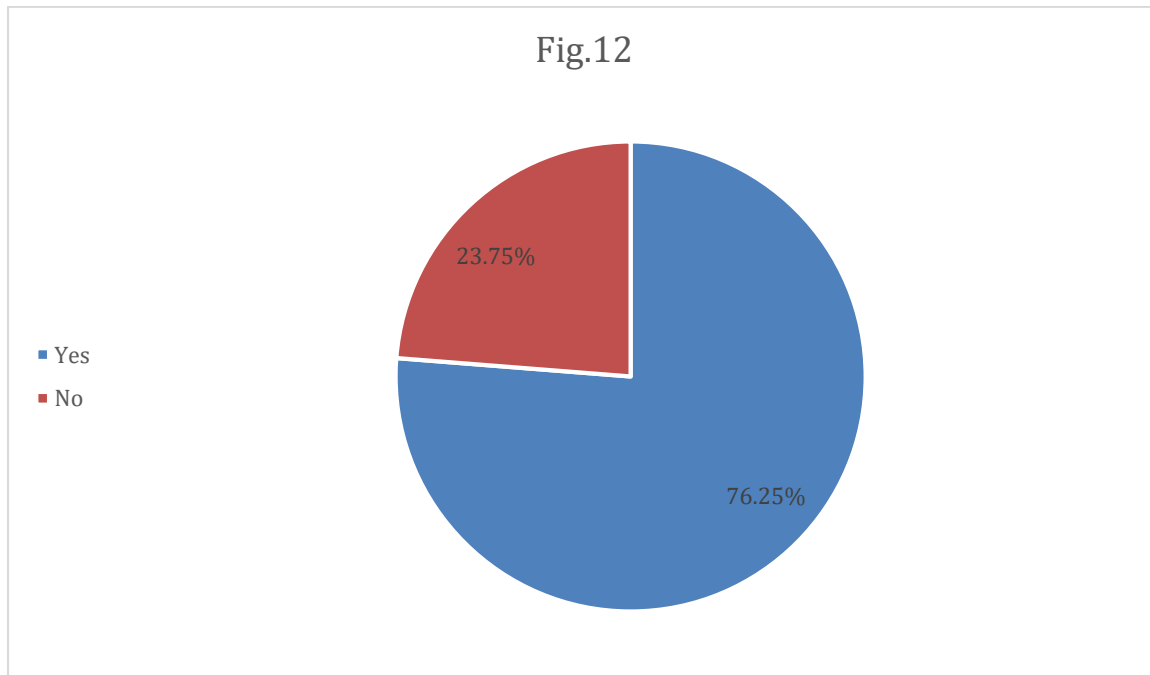


Table.12

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Yes | 61 | 76.25% |
| No | 19 | 23.75% |
| Total | 80 | 100% |

13. In case of default by delivery boy: It has been witnessed that on many occasions the delivery boys deliver the fake goods instead of the goods ordered, even stone and bricks have been wrapped into the packaging material and delivered to the consumers. In this kind of default, who shall be held responsible? (52.5%) of the people hold the view that both the online store and courier company shall be held responsible, whereas (16.25%) people are of the opinion that it should be the personal liability of the delivery boy followed by the people (13.75) who favoured that courier company shall be held responsible and (17.5%) people wants online store to be held responsible in case of default by delivery boy. Fig.13 and table.13 given below represents the study.

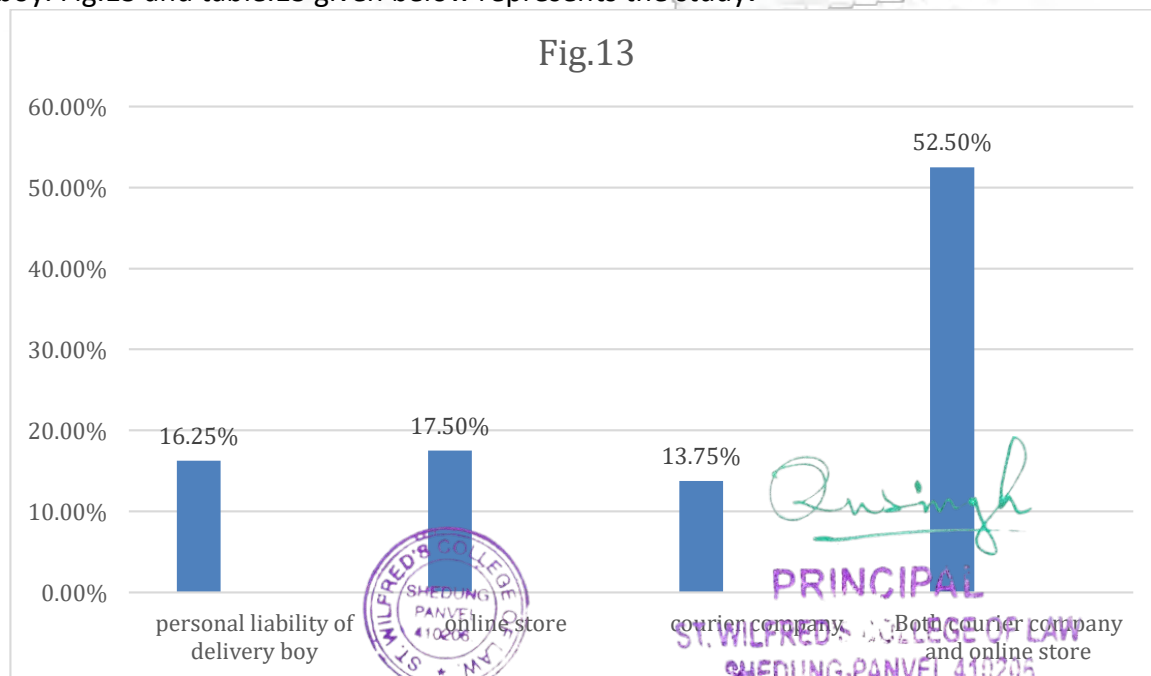


Table.13

| Response | No. of people | Percentage |
|---------------------------|---------------|-------------|
| Liability of delivery boy | 13 | 16.25% |
| Online store | 14 | 17.50% |
| Courier company | 11 | 13.75% |
| Both B&C | 42 | 52.50% |
| Total | 80 | 100% |

14. Online stores play discriminatory in terms of availability of goods: it has been witnessed that Online stores play discriminatory for the availability of goods. For instance, when a consumer intends to buy a specific good, so he tries to order that product and he gets the response “that seller doesn’t deliver this item to your location” whereas the same good can be ordered from a big city. This is a kind of discrimination, which makes a distinction between consumers (city consumer and small town consumer) and even the villages in rural areas don’t have access to the service provided by the online stores because of the approach of keeping available goods to certain specific locations. (87.5%) of the people believe that online stores play discriminatory in terms of keeping the goods available to certain specific location. On the contrary a minimal of (12.50%) of the people believe that there is no such case. Fig.14 and table.14 given below represents the study.

Fig.14

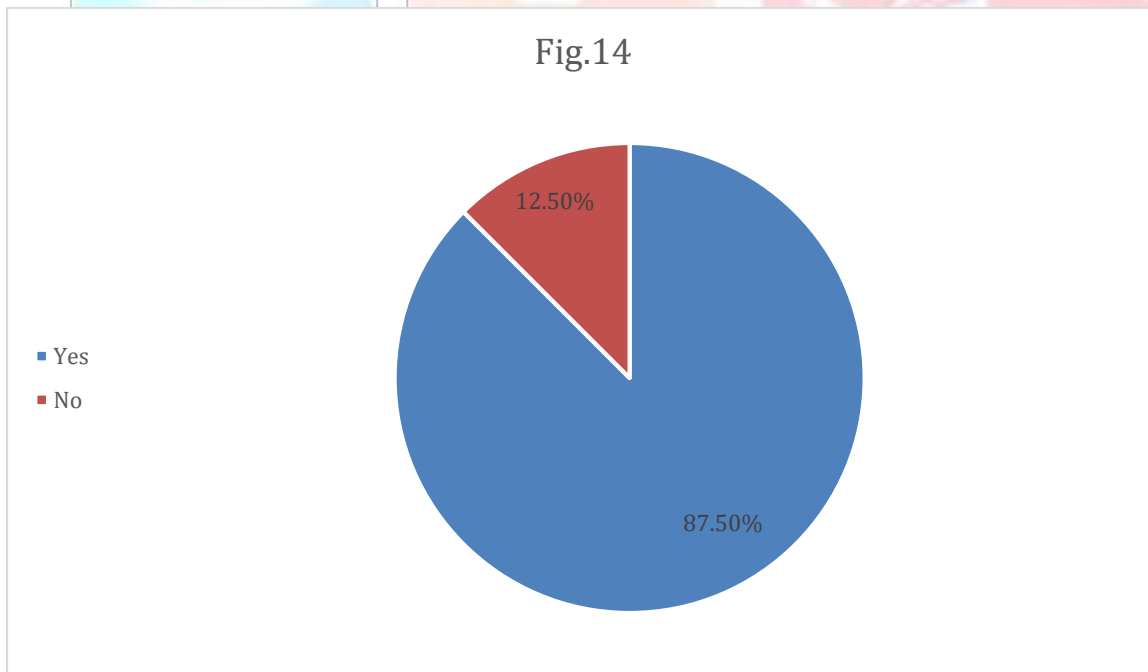


Table.14

| Response | No. of people | Percentage |
|--------------|---------------|-------------|
| Yes | 70 | 87.50% |
| No | 10 | 12.50% |
| Total | 80 | 100% |

15. Factors that attract people towards online shopping: There are a number of factors that attracts people towards the online shopping. The factors include the wide range of price available on different web portals provides consumer an opportunity to compare the price. The choice available on the web

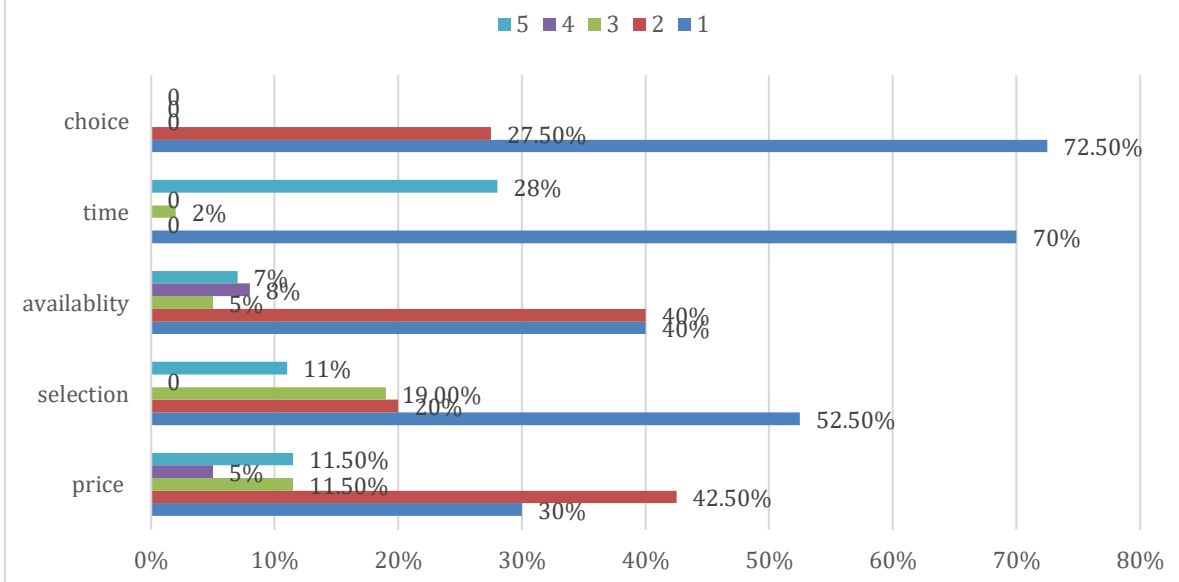
stores is also a factor that drives people to shop online. Last but not least the time factors, online shopping provides an opportunity to the consumer to buy from any seller with his bedroom, it saves the time of the consumer, which otherwise gets wasted while buying offline. The selection of products while buying offline is a hectic process, which is not the case in online shopping. Fig.15 and table.15 and table.15.1 given below represents the study.

Table. 15

| Factors | Preference (1) | Preference (2) | Preference (3) | Preference (4) | Preference (5) | Total |
|--------------|----------------|----------------|----------------|----------------|----------------|-------|
| Price | 24 | 34 | 09 | 09 | 04 | 80 |
| selection | 42 | 16 | 15 | 0 | 09 | 80 |
| Availability | 32 | 32 | 04 | 07 | 05 | 80 |
| Time | 56 | 0 | 01 | 0 | 23 | 80 |
| Choice | 58 | 22 | 0 | 0 | 0 | 80 |



fig.15



It is clear from the graph that choice (72.5%), time (70%), selection (52.5%) are the factors that attract the people towards the online shopping.

Table 15.1

| Factors | Preference (1) | Preference (2) | Preference (3) | Preference (4) | Preference (5) | Total |
|--------------|----------------|----------------|----------------|----------------|----------------|-------|
| Choice | 72.50% | 27.50% | 0 | 0 | 0 | 100% |
| Time | 70% | 0 | 2% | 0 | 28% | 100% |
| Availability | 40% | 40% | 5% | 8% | 7% | 100% |
| Selection | 52.50% | 20% | 19% | 0 | 7% | 100% |

| | | | | | | |
|-------|-----|-----|--------|----|--------|------|
| Price | 30% | 42% | 11.50% | 5% | 11.50% | 100% |
|-------|-----|-----|--------|----|--------|------|

Chapter VI Conclusion and Suggestions

Online shopping, certainly has assumed tremendous significance in the overall e-commerce across the globe and the state of J&K is no exception to it. Online shopping is preferred by almost everyone who is having access to the internet, because of its convenience, information and reviews, price comparison and selection available on the online web shop. This has become trendy, because of the availability of multi brand products under one banner and the delivery of products on the doorstep. It is time saving and offers a consumer to bypass the intermediaries while shopping. It's one of the most distinctive feature is that it remains 24 hours a day and 7 days a week open and provides an opportunity to everyone shop anytime. Online shopping is part of the e-commerce and e-commerce enables us to engage in a great number of transactions that otherwise would not be possible. On a close analysis of overall e-commerce particularly online shopping, the effect is that it is quite susceptible to e-commerce harms including fraud and security concerns, privacy concerns, lack of full cost disclosure and while transacting online there is no guarantee of secure online payment because of phishing concerns. Unlike EU, US and UK, little attention has been paid to the e-commerce protection in India and in the state of J&K. That gets substantiated by the challenges faced by the consumer and only a modicum of e-commerce problems have been brought before courts so far. But that does not mean all is well in the field. The reason simply is, there are no adequate laws, protecting the e-commerce consumer, in place in India particularly in J&K.

The OECD guidelines should act as beacon for countries like India and J&K.

The state of J&K should also come up, in the form of legislative intervention, to fix challenges, inter alia, like privacy invasion, phishing and insecure payment methods. Concerning cross-border consumer disputes, time has come for India to join hand with the organizations like ICPEN. The EU and US approach should form the basis of the shift in strengthening the legal framework in India and J&K. when many countries in the world has considered and provided, in their domestic laws, provisions for out-of-court settlements, adjudication methods like arbitration, mediation to solve consumer disputes should also be brought under the statute book in J&K and India.

Last but not least 'consumer is sovereign' and 'customer is king' should not remain mere more than myths in the present scenario. In this context, the government however, has a primary responsibility to protect the consumer's right and interests through appropriate policy measures, legal structure and administrative framework. There is, therefore, a need to modernise the said Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

Based on the doctrinal study I am able to suggest the following:

- To bring the required changes in the existing law in order to safeguard the consumers privacy's and should be protected against phishing by proper law;
- To remove the ambiguity by defining the e-consumer;
- To define the jurisdiction in case that is a consumer dispute while making transactions online;
- To bring the online shopping expressly with in the ambit of the consumer protection Act, 1987;
- Keeping in view the basic principles of the contract such as *consensus ad idem* there is no such thing in e-contracts. Standard form of contract should be removed, the law should be made clear on this point;
- Proper time limit should be framed for the delivery of products, no delay in the service must be ensured
- Return of products which are damaged should be, in time, taken care of, so that neither the time nor the tender of consumers gets wasted;
- Misleading advertisers should be held liable for befooling the common consumers;
- Double standard while displaying the products by web shoppers on the web shop should be taken care of;
- Provisions for "product Liability" action for or on account of person's injury, death, or property damage caused by or resulting from any product has been added. The basis for product liability action and the liability of a manufacturer to a claimant have been provided.
- The provision of "Mediation" as an Alternate Dispute Resolution Mechanism has been added. This is aimed at giving legislative basis to resolution of consumer disputes through mediation, thus making the process less cumbersome, simple and faster. This will be done under the aegis of the consumer courts.
- To enhance the pecuniary jurisdiction of the Consumer Grievance Redressal Agencies; increasing minimum number of Members in the consumer courts to facilitate fast disposal of complaints;
- Provisions for power to review their own orders by the State and District Commission;
- Provisions for consumers to file complaints electronically;

Consumer markets for goods and services have undergone drastic transformation, since the enactment of the J&K Consumer Protection Act, 1987. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practises. Misleading advertisements, tele marketing, multi-level marketing, direct selling and e tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent the consumer detriment. There is therefore, a need of a change in the Act or the enactment of the new Act.

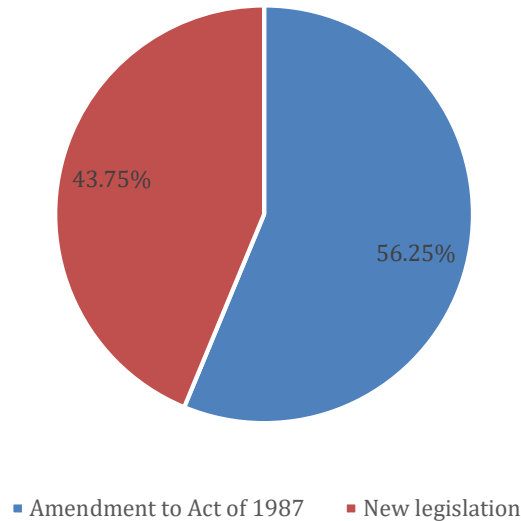
One of the questions in the questionnaire was to know from the people, what kind of change they want in law, so that the online shopping will be regulated by law and the consumers will be protected and people will be more and more attracted towards the online shopping and in turn there will be the growth of economy, creation of jobs and the consumer satisfaction will be achieved as well. The views of people with respect to the change in law is divided, but a total of (56.25%) of the people expressed that there should be amendment to the J&K Consumer Protection Act, 1987. They want, that the e-consumer should be brought within the ambit of definition of consumer provided within the Act. Similarly, other provisions for the dealing with the key concerns should be brought into the legislation. So the consumer buying online should not only feel secure but protected as well under the law.

On the other hand a total of (43.75%) people expressed that there should be a separate legislation for consumer protection while buying online like that of law governing offline shopping. Following fig.1 and table.1 illustrates the study:



Qu Singh
 PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

fig.1



| Response | No. of people | Percentage |
|---|---------------|------------|
| Amendment to the J&K consumer protection Act,1987 | 45 | 56.25% |
| Enactment of the new Act | 35 | 43.75% |
| Total | 80 | 100% |

The study reveals that people are inclining towards the online shopping but the concerns while buying online keeps them being sceptical. People want that online web stores must ensure that the advertisement of the goods should ensure that the goods are in consonance with the advertisement. Some of the people raised that the web stores should provide the sufficient information with respect to the products. Which will help in making the rational choice while buying online.

Almost everyone has raised the concern of the privacy, the people wants from the web store that the provision of disclosure of personal information should be erased and if it is not possible then the information should not be misused.

I am personally not in the favour of the enactment of new Act, as there are already the number of legislations available within the state. There are laws, which provides an umbrella protection to the consumers while buying online, including other than, the Consumer protect Act, are the Contract Act, Sale of Goods Act, Information technology Act. The problem with these legislations is that they don't provide any specific law dealing with the consumer buying online, which results in the ambiguity and confusion. Because people are not aware of the laws or these laws provide a long route to the remedy. The other factor which keeps people at the bay is the lack of proper implementation of the laws.

The Consumer Protection Act 1987 is in need of the amendment, in order to deal with the challenges faced by the consumer. The people should be made aware of the laws and proper education of laws should be provided to the consumers. The people have the right to know, they should be aware of the laws dealing with a particular field. The people should be made aware of the remedies in case there is the violation of laws.

Since the Consumer protection is a socio-economic programme to be pursued by the government as well as the business. The satisfaction of the consumer is in the interest of both, in this context, the government.

By bringing the change in the Act of 1987, the responsibility which lies on the government to protect the consumers' interests and rights through appropriate policy measures, legal structure and administrative framework may be achieved.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Bibliography

Chapter II

16. <http://purple.ai/the-history-of-online-shopping/>
17. http://www.zwgl.com.cn/article_info.asp?id=4243
18. <http://domainnamewire.com/2007/07/26/rh-donnelley-acquiresbusinesscom-for345m>
19. <http://techcrunch.com/2009/07/22/amazon-buys-zappos>
20. <http://www.reuters.com/article/idUSBNG538820091027>
21. http://www.msnbc.msn.com/id/40499923/ns/business-us_business
22. www.marketwatch.com/story/amazon-buy-diaperscom-parent-in-545mindeal-2010-11-08
23. <http://techcrunch.com/2011/03/28/ebay-to-acquire-gsi-commerce-for-2-4-billion>
24. <http://yourstory.com/2013/01/google-india-study-about-online-shopping/>
25. <http://www.mbaskool.com/business-articles/marketing/7695-is-online-shopping-booming-in-indiaan-empirical-study.html>
26. <http://www.gadgetsnow.com/tech-news/Online-shoppers-in-India-to-cross-100-million-by-2016-Study/articleshow/45217773.cms>
27. <http://devmantra.com/2015/09/01/e-commerce-and-its-evolution-in-india/>
28. <http://devmantra.com/2015/09/01/e-commerce-and-its-evolution-in-india/>
29. <http://www.risingkashmir.com/news/online-shopping-facility-now-available-in-rural-kashmir>
30. <http://www.greaterkashmir.com/news/business/online-shopping-boosts-courier-services-in-kashmir/1015.html>
31. <http://www.greaterkashmir.com/news/business/online-shopping-boosts-courier-services-in-kashmir/1015.html>
32. <http://www.bqr.in/news/online-shopping-to-more-than-double-in-india-by-2016-study/>
33. Online International Journal Available at <http://www.cibtech.org/jet.htm> 2016 Vol. 6 (3) July-September, pp.62-69/Bhat et al. titled as [CONSUMER BEHAVIOUR TOWARDS ONLINE SHOPPING: AN EMPIRICAL STUDY FROM KASHMIR VALLEY]

Chapter III

19. Wealth of nations pg. 172
20. P. Sivaprakasam, "Recent Trends that Reflect the Consumer Protection in India", Indian 21. Consumer Co-operator, Vol.22, No.1, January-March, 1995, p.4.
22. J&K Consumer Protection Act, 1987
23. Consumer Protection Act, 1986
24. International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective)
25. Clarke, "Electronic Commerce Definitions," available at <http://www.anu.edu.au/people/Roger.Clarke/EC/ECDefns.html>
26. Lodder, "Legal Aspects of Electronic Commerce," available at <http://www.rechten.vu.nl/~lodder/enlist/ec.pdf>
27. International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective)
28. Smith, H. J., Milberg, S., and Burke, S. 1996. Information privacy: Measuring individuals' concerns about organizational practices. MIS Quarterly, 20(2): 167-196.
29. Stewart, K. A. and Segars, A. H. 2002. An empirical examination of the concern for information privacy instrument. Information Systems Research, 13(1): 36-49.
30. Malhotra, N., Kim, S. S., and Agarwal, J. 2004. Internet Users' Information Privacy Concerns (IUIPC): The Construct, the Scale, and a Causal Model. Information Systems Research, 15(4): 336-355.
31. Milne, G. R. and Gordon M. E. 1993. Direct mail privacy-efficiency trade-offs within an implied social contract framework. Journal of Public Policy Marketing, 12(2): 206-15.
32. <http://research.microsoft.com/en-us/um/people/chquo/phishing.pdf>

Chapter IV

33. *Cyber law in India*. Dr Farooq Ahmad pg.215.

34. *Indian Contract Act, 1872*.

35. *MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (Department of Information Technology) NOTIFICATION New Delhi, the 11th April, 2011 2013 (54) PTC 578 (Mad)*

36. *Recommendations of the OECD Council concerning Guidelines for Consumer Protection in the context of electronic commerce, approved on 24 March, 2016....OECD (2016), Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264255258-en>.*

37. *International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective*

38. <https://iccwbo.org/media-wall/news-speeches/icc-issues-new-guidelines-on-marketing-and-advertising-using-electronic-media/>

39. *International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective*

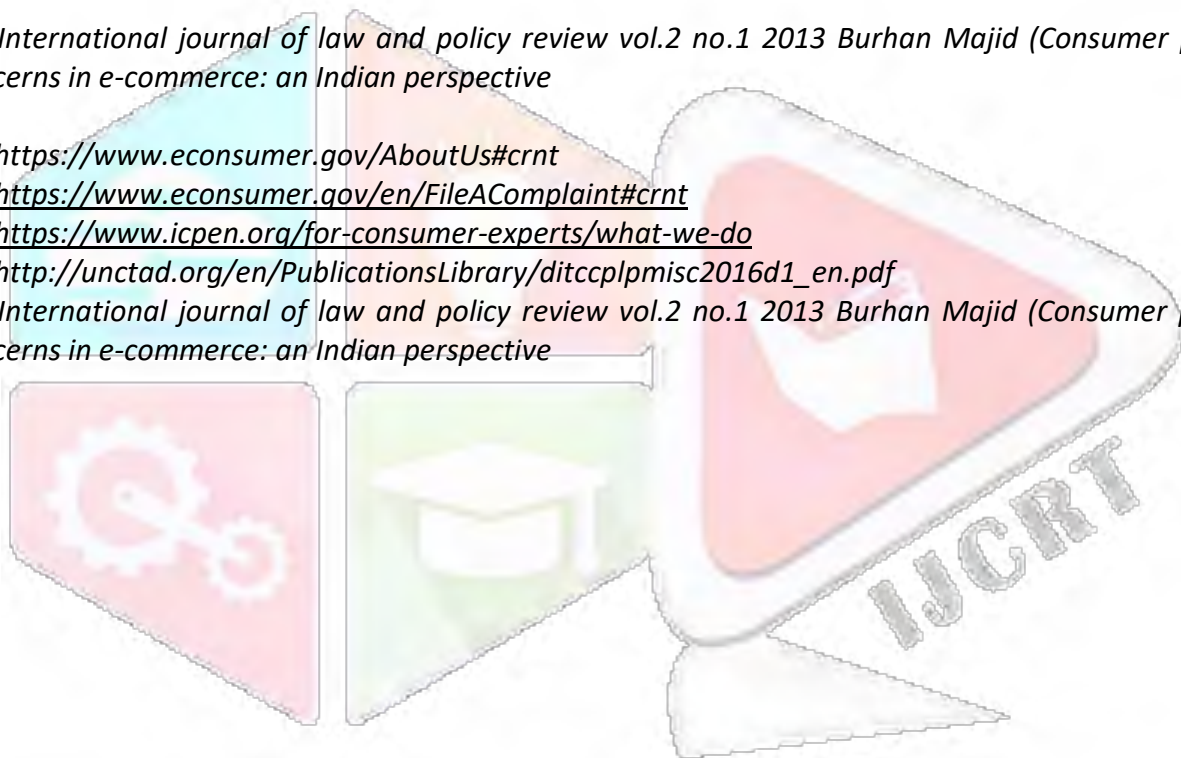
40. <https://www.econsumer.gov/AboutUs#crnt>

41. <https://www.econsumer.gov/en/FileAComplaint#crnt>

42. <https://www.icpen.org/for-consumer-experts/what-we-do>

43. http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

44. *International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective*



Qus Singh
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

LAND ACQUISITION IN INDIA

Maroof Bashir

PHD*LLM,SLET,B.A LLB,M.A ENGLISH

PRESENTLY WORKING AS LECTURER AT SOPORE LAW COLLEGE

CHAPTER 1 INTRODUCTION

Land Acquisition in India refers to the process of land acquisition by the central or state government of India for various infrastructure and economic growth initiatives. Several controversies have arisen with claims that land owners have not been adequately compensated.

Land acquisition in India is governed by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force from 1 January 2014.¹ Till 2013, land acquisition in India was governed by Land Acquisition Act of 1894. On 31 December 2014, the new government in India passed an ordinance with an official mandate to "meet the twin objectives of farmer welfare; along with expeditiously meeting the strategic and developmental needs of the country". The government passed Land Acquisition Amendment Bill² in Lok Sabha on 10 March 2015.

Controversies

Eminent domain doctrine has been widely used in India since the era of Independence, with over 21.6 million people in the period of 1951-90.³ They have been displaced with large-scale projects like dams, canals, thermal plants, sanctuaries, industrial facilities, and mining (Pellissery and Dey Biswas 2012, pp 32–54). These occurrences are generally categorized as "development-induced displacement".

The process of land acquisition in India has proven unpopular with the citizenry. The amount reimbursed is fairly low with regard to the current index of prices prevailing in the economy. Furthermore, due to the low level of human capital of the displaced people, they often fail to find adequate employment.

1. "The Land Acquisition, Rehabilitation And Resettlement Bill, 2011 – Full Text Of Bill".

Ministry of Rural Development, Government of India.

2. "Land Bill: Opposition, in leadership of Sonia Gandhi, marches towards Rashtrapati Bhawan" (Post.jagran.com). Retrieved 17 March 2015



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

3. Sainath, Palagummi (1996). *Everybody loves a good drought*. Penguin Books. p. 470.

ISBN 0-14-025984-8

The draft of the government's National Policy for Rehabilitation states that a figure around 75% of the displaced people since 1951 are still awaiting rehabilitation. However, it should be noted that displacement is only being considered with regard to "Direct Displacement". These rehabilitation policies do not cover fishermen, landless laborers, and artisans. Roughly one in ten Indian tribals is a displaced person. Dam projects have displaced close to a million Adivasis, with similar woe for displaced Dalits. Some estimate suggests 40 percent of displaced people are of tribal origins.

There have been a rising number of political and social protests against the acquisition of land by various industrialists. They have ranged from Bengal, Karnataka, and Uttar Pradesh in the recent past. The acquisition of 997 acres of land by Tata motors in Bengal in order to set up a factory for the cheapest car in India was protested (Singur Tata Nano controversy). At least a decade before the Singur episode similar events occurred in West Bengal, although the opposition parties and other civil society organisations remained silent at that time. Similarly, the Sardar Sarovar Dam project on the river Narmada was planned on acquired land, though the project was later cancelled by the World Bank.

The Land Acquisition Act of 1894 allowed the government to acquire private lands. It is the only legislation pertaining to land acquisition which, though amended several times, has failed to serve its purpose. Under the 1894 Act, displaced people were only liable for monetary compensation linked with market value of the land in question, which was still quite minimal considering circle rates are often misleading. Land acquisition related conflicts during the post reform period in India has shown three distinctive tendencies:⁴

- i. Technology and bundle of rights
- ii. Power Land regulation nexus, and
- iii. Disappearing commons

The current BJP government driven Land Acquisition Amendment Bill in Lok Sabha on 10 March 2015 has seen a tough resistance from key position parties in India who have called the proposed amendments anti farmer and anti poor. The proposed amendments remove requirements for approval from farmers to proceed with land acquisition under five broad categories of projects.

4. Pellissery, Sony and Sattwick Dey Biswas. (2012). *Emerging Property Regimes In India: What It Holds For the Future of Socio-Economic Rights?* IRMA Working Paper 234. PP. 9-16.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

While the bill was passed in Lok Sabha, it still needs approval from the upper house, where the current government does not have a majority, for the proposed amendments to become effective.

| Displaced Tribals | | | |
|--------------------------|------------------|-----------------------------|--------------------------|
| Project | State | Displaced Population | Tribal Percentage |
| Karjan | Gujarat | 11,600 | 100 |
| Sardar Sarovar | Gujarat | 2,00,000 | 57.6 |
| Maheshwar | Madhya Pradesh | 20,000 | 60 |
| Bodhghat | Madhya Pradesh | 12,700 | 73.91 |
| Icha | Bihar | 30,800 | 80 |
| Chandil | Bihar | 37,600 | 87.92 |
| Koel Karo | Bihar | 66,000 | 88 |
| Mahi Bajaj Sajar | Rajasthan | 38,400 | 76.28 |
| Polavaram | Andhra Pradesh | 1,50,000 | 52.90 |
| Maithon & Panchet | Bihar | 93,874 | 56.46 |
| Upper Indravati | Odisha | 18,500 | 89.20 |
| Pong | Himachal Pradesh | 80,000 | 56.25 |
| Ichampalli | Andhra Pradesh | 38,100 | 76.28 |
| Tultuti | Maharashtra | 13,600 | 51.61 |
| Daman Ganga | Gujarat | 8,700 | 48.70 |
| Bhakra | Himachal Pradesh | 36,000 | 34.76 |
| Masan Reservoir | Bihar | 3,700 | 31 |
| Ukai Reservoir | Gujarat | 52,000 | 18.92 |
| Tamnar | Chhattisgarh | 59999 | |

Issues

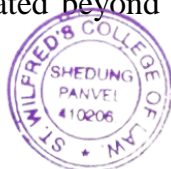
Some of the important issues surrounding the Land Acquisition are discussed below.⁵

The major land acquisition and conflicts happen in the densely populated areas of the countryside.

5. <http://www.rfgindia.org/publications/LandAcquisition.pdf>

Eminent Domain

The power to take property from the individual rooted in the idea of eminent domain. The doctrine of eminent domain states, the sovereign can do anything, if the act of sovereign involves public interest. The doctrine empowers the sovereign to acquire private land for a public use, provided the public nature of the usage can be demonstrated beyond doubt. The doctrine is based on the following two Latin maxims,



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

(1) *Salus populi suprema lex* (Welfare of the People Is the Paramount Law) and
 (2) *Necessitas publica major est quam* (Public Necessity Is Greater Than Private Necessity).⁶ In the history of modern India, this doctrine was challenged twice (broadly speaking) once when land reform was initiated and another time when Banks were nationalized.⁷

The Constitution of India originally provided the right to property (which includes land) under Articles 19 and 31. Article 19 guaranteed that all citizens have the right to acquire, hold and dispose of property. Article 31 stated that “no person shall be deprived of his property save by authority of law.” It also indicated that compensation would be paid to a person whose property has been taken for public purposes (often subject to wide range of meaning). The Forty-Fourth Amendment of 1978 deleted the right to property from the list of fundamental rights with an introduction of a new provision, Article 300-A, which provided that “no person shall be deprived of his property save by authority of law” (Constitution 44th Amendment, w.e.f. 10.6.1979). The amendment ensured that the right to property“ is no more a fundamental right but rather a constitutional/legal right/as a statutory right and in the event of breach, the remedy available to an aggrieved person is through the High Court under Article 226 of the Indian Constitution and not the Supreme Court under Article 32 of the Constitution.

State must pay compensation at the market value for such land, building or structure acquired (Inserted by Constitution, Seventeenth Amendment) Act, 1964), the same can be found in the earlier rulings when property right was a fundamental right (such as 1954 AIR 170, 1954 SCR 558, which propounded that the word “Compensation” deployed in

6. *Chandrachur, Y. V.* 2009. *Concise Law Dictionary*. New Delhi: LexisNexis Butterworths Wadhwa Nagpur.

7. *Tripathi, P.K.* 1980. “Right of Property After 44th Amendment Better Prosecuted Than Ever Before.” *Air Journal* (51).

Article 31(2) implied full compensation that is the market value of the property at the time of the acquisition. The Legislature must “ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of”). Elsewhere, Justice, Reddy, O Chinnappa ruled (*State Of Maharashtra v. Chandrabhan Tale* on 7 July 1983) that the fundamental right to property has been abolished because of its incompatibility with the goals of “justice” social, economic and political and “equality of status and of opportunity” and with the establishment of “a socialist democratic republic, as contemplated by the Constitution. There is no reason why a new concept of property should be introduced in the place of the old so as to bring in its wake the vestiges of the doctrine of *Laissez Faire* and create, in the name of efficiency, a new oligarchy. Efficiency has many facets and one is yet to discover an infallible test of efficiency to suit the widely differing needs of a developing society such as ours” (1983 AIR 803, 1983 SCR (3) 327). The concept of efficiency has been introduced by Justice Reddy, O Chinnappa, very interestingly coupled with the condition of infallibility. In India, with this introduction of ‘social’ elements to the property rights, a new phase had begun. K. K. Mathew, justice

of *Kesavananda Bharati vs State of Kerala*⁸ stated this precisely: “Property in consumable goods or means of production worked by their owners (use aspects of property) were justified as necessary condition of a free and purposeful life; but when property gave power not only over things but through things over persons (power aspect of property) also, it was not justified as it was an instrument of servitude rather than freedom”.⁹

Legislative changes

The 2013 Act focuses on providing not only compensation to the land owners, but also extend rehabilitation and resettlement benefits to livelihood loser from the land, which shall be in addition to the minimum compensation. The minimum compensation to be paid to the land owners is based on a multiple of market value and other factors laid down in the Act.

8. Bhat, P. I. (2004) *Fundamental Rights: A Study of their interrelationships*. Kolkata: Eastern Law House.

9. Pellissery, S. 2014. *Land rights as social rights. The case of India. FLOOR Working Paper No. 23. Paper prepared for the workshop »Understanding Southern Welfare – the B(R)ICS countries«, 24–26 November 2014, Center for Interdisciplinary Research (ZiF), University of Bielefeld, Germany.*

The Act forbids or regulates land acquisition when such acquisition would include multi-crop irrigated area. The Act changed the norms for acquisition of land for use by private companies or in case of public-private partnerships, including compulsory approval of 80% of the landowners. The Act also introduced changes in the land acquisition process, including a compulsory social-impact study, which need to be conducted before an acquisition is made.¹⁰

The new law, also has some serious shortcomings as regards its provisions for socioeconomic impact assessment and it has also bypassed the constitutional local self governments by not recognizing them as "appropriate governments" in matters of land acquisition.¹¹

Monetary compensation

Major Indian infrastructure projects such as the Yamuna Expressway have paid about Rs. 2800 crores (US\$500 million) for land,¹² or over US\$25,000 per acre between 2007 and 2009. For context purposes, this may be compared with land prices elsewhere in the world:

- According to The Financial Times, in 2008, the farmland prices in France were Euro 6,000 per hectare (\$2,430 per acre; IN Rs. 1,09,350 per acre).¹³
- According to the United States Department of Agriculture, as of January 2010, the average farmland value in the United States was \$2,140 per acre (IN Rs. 96,300 per acre). The farmland prices in the United States varied between different parts of the country, ranging between \$480 per acre to \$4,690 per acre.¹⁴

A 2010 report by the Government of India, on labour whose livelihood depends on agricultural land, claims that, per 2009 data collected across all states in India, the all-India annual average daily wage rates in agricultural occupations ranged between IN



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

10. Cernea, M. (2013) *Progress in India: New Legislation to Protect Persons Internally Displaced by Development Projects*, 21 October 2013. www.brookings.edu/blogs/up-front/

11. Guha, A. (2012); *Social Impact Assessment in the Draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011: A Critical Overview*. In 'Anthropological Impact Assessment of Development Initiatives'. (2012) Eds. A.K. Danda, K.K. Basa, K.K. Misra. Jhargram: Indian National Confederation and Academy of Anthropologists.

12. *Spent Rs 2800 cr on land acquisition for Yamuna Expressway: JP Associates*

13. "European farmland hits record prices". *The Financial Times*.

14. "Land use, value and management: Agricultural Land Values". *USDA Economic Research Service*.

Rs. 53 to 117 per day for men working in farms (US\$354 to 780 per year), and between IN Rs. 41 to 72 per day for women working in farms (US\$274 to 480 per year). This wage rate in rural India study included the following agricultural operations common in India: ploughing, sowing, weeding, transplanting, harvesting, winnowing, threshing, picking, herdsman, tractor driver, unskilled help, masonry, etc.

The compensation for the acquired land is based on the value of the agricultural land, however price increases have been ignored. The land value would increase many times, which the current buyer would not benefit from. Secondly, if the prices are left for the market to determine, the small peasants could never influence the big corporate tycoons. Also it is mostly judiciary who has awarded higher compensation than bureaucracy.

Delayed projects

Delayed projects due to mass unrest have caused a damaging effect to the growth and development of companies and the economy as a whole. Earlier states like Maharashtra, Tamil Nadu, Karnataka, and Andhra Pradesh had been an attractive place for investors, but the present day revolts have shown that land acquisition in some states pose problems.

Consequences

The consequences of land acquisition in India are manifold. The empirical and theoretical studies on displacement through the acquisition of land by the government for development projects have so far focussed on the direct and immediate adverse consequences of land acquisition.¹⁵ Most of the analytical as well as the descriptive accounts of the immediate consequences of land acquisition for development projects draws heavily from Michael Cernea's 'impoverishment risk model', which broadly enumerated eight 'risks' or 'dimensions' of development-induced displacement. These eight risks are very much direct and basic in nature which are (i) landlessness, (ii) joblessness, (iii) marginalization, (iv) loss of access to common property resources, (v) increased morbidity and mortality, (vi) food insecurity, (vii) homelessness and (viii) social disarticulation. Recently L.K. Mahapatra has added 'loss of education' as another impoverishment risk in situations of displacement.

But apart from these direct and immediate effects of land acquisition there are more subtle and indirect effects of this coercive and centralized legal procedure, which have a

15. Chandrachur, Y. V. 2009. *Concise Law Dictionary*. New Delhi: LexisNexis Butterworths Wadhwa Nagpur.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

bearing on various decentralised and participatory democratic processes, and institutions of the state power. Land reforms and the Panchayati raj institutions are the two most important areas, which are being vitiated by land acquisition. Of all the states of India, the consequences and controversies around land acquisition in West Bengal has recently gained a lot of national and international attention. The peasant resistances against governmental land expropriation in Singur (a place in the Hoogly district) and Nandigram (a place in the East Medinipur district) has finally led to the fall of the communist party(Marxist) led government in West Bengal, which ruled the state through democratic election for 34 years. The communist led left front government of West Bengal under the economic liberalisation policy adopted by the Central government of the country shifted from its pro-farmer policy and took to the capitalist path of industrial development, which at the micro-levels endangered the food security of the small and marginal farmers as well as sharecroppers who formed the vote bank of the left front government of West Bengal

Alternatives

One of the alternative proposals to land acquisition is leasing the land from landowners for a certain lease period. Proponents cite how land acquisition policies by Governments unwittingly encourage rampant land speculation making the projects expensive since huge portion of investment would be need to be allocated for land acquisition costs.¹⁶ According to them, policies of land acquisition gave way to political cronyism where land is acquired cheaply by securing favors from local governments and sold to industries at steep mark up prices. Leasing land, may also support sustainable project development since the lands need to be returned to the landowners at the end of the lease period in a condition similar to its original form without considerable environmental degradation.¹⁷ When the land is leased then anybody who has to otherwise give up land or livelihood will be compensated for its growing valuation over time. In this model, the landowner lends her land to the government for a steadily-increasing rent, or through an annuity-based system as currently practiced in Haryana and Uttar Pradesh.

16. *Lease land, don't acquire it*, by Swaminathan S Anklesaria Aiyar
http://articles.economictimes.indiatimes.com/2012-06-20/news/32335633_1_land-acquisition-bill-land-prices-conversion-of-agricultural-land Economic Times, 20 June 2012

17. *Why Land Tenure should be considered in Design of Projects*
<http://www.fao.org/docrep/005/y4307e/y4307e06.htm>

Some industries already follow the model of leasing lands instead of acquiring it. Energy development projects such as oil & gas extraction usually lease lands. Renewable energy projects such as Wind Power farms and Bio-fuel projects often lease the land from land owners instead of trying to acquire the land which could make the projects prohibitively expensive.



Qu Singh
 PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

CHAPTER 2

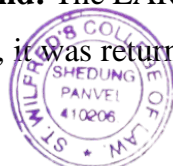
TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) ORDINANCE, 2014

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated on December 31, 2014. The Ordinance amends the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.¹

- The LARR Act 2013 outlines the process to be followed when land is acquired for a public purpose. Key changes made by the Ordinance are:
- **Provisions of other laws in consonance with the LARR 2013:** The LARR Act 2013 exempted 13 laws (such as the National Highways Act, 1956 and the Railways Act, 1989) from its purview. However, the LARR Act 2013 required that the compensation, rehabilitation, and resettlement provisions of these 13 laws be brought in consonance with the LARR Act 2013, within a year of its enactment, through a notification. The Ordinance brings the compensation, rehabilitation, and resettlement provisions of these 13 laws in consonance with the LARR Act 2013.
- **Exemption of five categories of land use from certain provisions:** The Ordinance creates five special categories of land use: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure projects including Public Private Partnership (PPP) projects where the central government owns the land.
- The LARR Act 2013 requires that the consent of 80% of land owners is obtained for private projects and that the consent of 70% of land owners be obtained for PPP projects. The Ordinance exempts the five categories mentioned above from this provision of the Act.
- In addition, the Ordinance permits the government to exempt projects in these five categories from the following provisions, through a notification:
- The LARR Act 2013 requires that a Social Impact Assessment be conducted to identify affected families and calculate the social impact when land is acquired.

1. LARR Act, 2013

- The LARR Act 2013 imposes certain restrictions on the acquisition of irrigated multi-cropped land and other agricultural land. For example, irrigated multi-cropped land cannot be acquired beyond a limit specified by the government.
- **Return of unutilised land:** The LARR Act 2013 required that if land acquired under it remained unutilised for five years, it was returned to the original owners or the land bank. The Ordinance



Poojitha
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

states that the period after which unutilised land will need to be returned will be five years, or any period specified at the time of setting up the project, whichever is later.

- **Time period for retrospective application:** The LARR Act 2013 states that the Land Acquisition Act, 1894 will continue to apply in certain cases, where an award has been made under the 1894 Act. However, if such an award was made five years or more before the enactment of the LARR Act 2013, and the physical possession of land has not been taken or compensation has not been paid, the LARR Act 2013 will apply.
- The Ordinance states that in calculating this time period, any period during which the proceedings of acquisition were held up: (i) due to a stay order of a court, or (ii) a period specified in the award of a Tribunal for taking possession, or (iii) any period where possession has been taken but the compensation is lying deposited in a court or any account, will not be counted.
- **Other changes:** The LARR Act 2013 excluded the acquisition of land for private hospitals and private educational institutions from its purview. The Ordinance removes this restriction.
- While the LARR Act 2013 was applicable for the acquisition of land for private companies, the Ordinance changes this to acquisition for 'private entities'. A private entity is an entity other than a government entity, and could include a proprietorship, partnership, company, corporation, non-profit organisation, or other entity under any other law.²

The LARR Act 2013 stated that if an offence is committed by the government, the head of the department would be deemed guilty unless he could show that the offence was

2. PRS Legislative Research, Institute for Policy Research Studies, January 8, 2015

committed without his knowledge, or that he had exercised due diligence to prevent the commission of the offence. The Ordinance replaces this provision and states that if an offence is committed by a government official, he cannot be prosecuted without the prior sanction of the government.

Few differences between the Acts are mentioned below:

| Colonial Act 1894 | LARR Act 2013 |
|---|---|
| The term "public purpose" was ambiguous and open to Government's discretion | Clearly defines various types of "public purpose" projects for which, Government can acquire private land. (Refer to appendix-1) |
| Land could be acquired forcibly. | <ul style="list-style-type: none"> • For private project, 80% affected families must agree. • For PPP project, 70% affected families must agree. • Only then land can be acquired. |
| They were given no voice in decision making. | Under Social impact assessment (SIA) even need to obtain consent of the affected artisans, laborers, share-croppers, tenant farmers, fishermen, small traders, desi liquor den |

| | |
|--|--|
| | owners, etc. whose (sustainable) livelihood will be affected because of the given project. |
| Government was free to decide how much money to pay while acquiring private land. | <ul style="list-style-type: none"> • Compensation proportion to market rates. • 4 times the market rate in rural area. • 2 times in urban area. • Affected artisans, small traders, fishermen etc. will be given one-time payment, even if they don't own any land. |
| No such restrictions on fertile land | <p>To ensure food security:</p> <ol style="list-style-type: none"> 1. Fertile, irrigated, multi-cropped farmland can be acquired only in last resort. 2. If such fertile land is acquired, then Government will have to develop equal size of wasteland for agriculture purpose. |
| — | <ul style="list-style-type: none"> • if Government acquires the lands for private company- the said private company will be responsible for relief and rehabilitation of the affected people. • Additional rehab.package for SC/ST owners. Example- fishing rights over dam, 25% extra money if settled outside their native district and so on. |
| No such safeguards | State Governments have to setup dispute settlement authorities. Chairman must be a district judge or lawyer for 7 years. |
| No such accountability | Head of the department will be made responsible, for any offense or mischief played from Government's side. (although this made the officers very cautious given the media-trials. They'd sit on the files instead of taking any action). |
| If project did not start, then acquired land was secretly sold/leased to private players at sky-high prices. | If project doesn't start in 5 years, land has to be returned to the original owner. |



Qu Singh
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

Why Land ordinance?³

- 1894's land act was bogus and exploitive. So Congress government enacted new law in 2013, with provisions for social impact assessment, fair compensation, dispute settlement and other fancy things.
- LARR-2013 Act became effective from 1st January 2014.
- But, this LARR Act-2013 established an extremely complex and impractical land acquisition process.
- **Holdouts:** Jhola chhap NGOs would instigate 20-25% of the affected families to stage holdout-promising them it'll fetch them even higher prices. and Given the 70-80% consent requirement, the project will never kickoff.
- **Litigation:** because local (and therefore corruption) Patwari and Tehsildars never maintain proper land records of who owns how much land.
- This raised the land prices, red tapism and thus the overall project cost.

3. Land Acquisition bill\Explained Land Ordinance 2014 Salient Features, Criticism.html

- Neither the farmer could sell its land and move to urban areas, no the entrepreneur could buy the land and move towards rural areas.
- Combined with Environment-activism and policy paralysis of UPA regime, the end result was infrastructure bottleneck, high inflation and fall in GDP.

Why Prime Minister Modi had to bring Land Ordinance 2014?

- As such those stringent LARR provisions did not apply to 13 central laws e.g. if land was acquired under Railways Act or Atomic Energy Act, then Social-impact assessment, market-rate compensation etc. were not applicable.
- But this "Exemption" was given only for a year i.e. upto 1st January 2015. By the time, Government needed to amend those 13 acts so that LARR-like high compensation rates can be given to farmers in those projects also. But it was no possible to amend 13 central laws because:
 - Frequent Disruptions in Winter session (December 2014)
 - Modi doesn't enjoy majority in Rajya Sabha.
 - some of the union ministries hadnot even prepared the bills.

Therefore, Government decided to use ordinance route under Article 123 of the Constitution

Differences between LARR ct 2013 and Land Ordinance 2014 are mentioned below:

| LARR-Act 2013 | Land Ordinance 2014 |
|--|--|
| <ul style="list-style-type: none"> • Mandatory 70% consent for PPP projects. | <ul style="list-style-type: none"> • Those "mandatory" things are no longer required for 5 types of projects: |

| | |
|---|---|
| <ul style="list-style-type: none"> • Mandatory 80% consent for private projects. • Mandatory Social impact assessment (SIA) for every projects. | <ol style="list-style-type: none"> 1. National security and Defense Production 2. Rural infrastructure, Rural electrification 3. Infrastructure and Social infrastructure 4. Industrial corridors 5. Housing for Poors. |
| SIA mandatory for every type of project. | SIA not needed for <ol style="list-style-type: none"> 1. Those five categories listed above 2. PPP projects, IF Government owns the land. |
| — | Building private hospitals and private educational institutes will also count as “public purpose”. Means, they too can acquire land if 80% affected families agreed. |
| Compensation: <ol style="list-style-type: none"> 1. 4 times the market rate in rural area. 2. 2 times in urban area. | Remains the same. |
| Stringent provisions for relief and rehabilitation (R&R). | remains the same |
| Private “ companies ” can acquire land for public purpose. | Private “ entities ” can acquire. Meaning private companies, NGOs, trusts, foundations, charity bodies, proprietors etc. too can acquire land for “public purpose”. |
| If any mischief played on Government’s part then head of the department will be responsible. | <ul style="list-style-type: none"> • Head of the department can’t be prosecuted without prior sanction of government (under CrPC Section 197). • This “immunity” is given to ensure bureaucrats don’t sit on the files, fearing media-trials and judicial activism. |

Land ordinance: Criticism/Anti-arguments

- Given the “Immunity” against prosecution, Bureaucrats will play mischief in land acquisition, to help Robert Vaadra types unabated.
- Those “five exempted categories” are very broad- particularly “infrastructure and social-infrastructure”. So, Pretty much all projects can be done without social impact assessment or taking consent of 70-80% of affected families. Entire LARR-2013 is made invalid through clever-wordplay.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- Social impact assessment (SIA) not required in five types of projects. So, local laborers, artisans, small traders will either get zero or very small relief package, even if their livelihood is lost because of industrial/infrastructure project.
- Private colleges and hospitals too can acquire land. But if they continue to charge hefty-fees then no real 'public-purpose' is served. Mushrooming of self-financed bogus-quality Engineering, Pharmacy and MCA colleges doesn't help reaping India's demographic dividend.
- Ordinance doesn't specifically say that such private hospitals and school/colleges are exempt from "Social impact assessment" (SIA). But they too can dodge SIA-bullet by claiming it's a "social-infrastructure" project.
- In parliamentary democracy, Ordinance should be used only for dire emergency. Modi could have waited till budget session, and get proper approval from parliament. [Counter-argument: there was deadline of 1/1/2015].

Examples of Public Purpose acquisition

- Strategic projects e.g. missile silos, anti-aircraft batteries, artillery installments and army bunkers.
- All type of infrastructure projects and PPP projects.
- Cold storage, Packaging-Processing units for Agriculture produce, dairy, fisheries and meat.
- Industrial corridors and manufacturing clusters.
- Education, research, vocational institutes.
- Sports, healthcare, tourism, space-tech.
- Housing for low income group.
- Creating new houses/towns for people affected in natural or manmade disasters.

13 central laws exempted

- If land is acquired for any of these 13 central laws, then LARR-2013 Act's provisions will not apply (For a year).
- Within that time, Government had to amend those 13 laws to give fair compensation. Since Modi couldn't do it, he got an ordinance cleared to extends LARR-high-compensation rates to these central laws:



Qus Singh
 PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

These Acts were exempted from LARR Act 2013 but covered via Ordinance

| Old Act | Year |
|--|------|
| Land Acquisition (Mines) Act | 1885 |
| Indian Tramways Act | 1886 |
| Damodar Valley Corporation Act | 1948 |
| Resettlement of Displaced Persons (Land Acquisition) Act | 1948 |
| Requisitioning and Acquisition of Immovable Property Act | 1952 |
| National Highways Act | 1956 |
| Coal Bearing Areas Acquisition and Development Act | 1957 |
| Ancient Monuments and Archaeological Sites Act | 1958 |
| Atomic Energy Act | 1962 |
| Petroleum and Minerals Pipelines Act | 1962 |
| Metro Railways (Construction of Works) Act | 1978 |
| Railways Act | 1989 |
| Electricity Act | 2003 |

Cabinet approves ordinance on amendments to Land Acquisition Act

The Union Cabinet, chaired by Prime Minister Narendra Modi, decided to amend the Act to bring under its purview 13 central legislations, including those relating to defence and national security, to provide higher compensation and rehabilitation and resettlement benefits to farmers whose land is being acquired.

As per the government following points are noteworthy:⁴

- The government decided to relax certain provisions of the Act and add Section 10 A to the legislation keeping in the mind development needs of the society.
- The mandatory "consent" clause and Social Impact Assessment (SIA) will not be applicable if the land is acquired for five purposes including national security, defence, rural infrastructure including electrification, industrial corridors and building social infrastructure including PPP where ownership of land continues to be vested with the government. However, the compensation and rehabilitation and resettlement packages will be applicable as per the new Land Acquisition Act for acquiring land for these purposes.
- As per the changes brought in the ordinance, multi-crop irrigated land can also be acquired for these purposes.
- "Such projects are vital to national security and defence of India including preparation for defence and defence production.

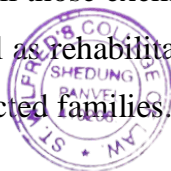


Principle
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

- The earlier Act provided for consent of 70 per cent of land owners whose land is acquired for PPP projects.
- There is a mandatory condition for provision of job for those whose land is acquired for industrial corridors.

4. <http://www.ibnlive.com/news/india/land-acquisition-bill-the-main-points-of-debate-and-controversy-969424.html>

- With this decision, rehabilitation and resettlement and compensation provisions of the Right to Fair Compensation and Transparency in Rehabilitation and Resettlement Act, 2013 will be applicable for the 13 existing central pieces of legislation including the Coal Bearing Areas Acquisition and Development Act, 1957, the National Highways Act, 1956 and the Land Acquisition (Mines) Act, 1885.
- Cabinet approved certain amendments in the Act "in order to remove" many difficulties which have been reported and certain amendments have been made to further strengthen the provisions to protect the interests of the 'affected families'.
- In addition, procedural difficulties in the acquisition of land required for important national projects required to be mitigated, the government said in a release.
- Government decision to bring excluded 13 Acts under the Land Acquisition Act for compensation and Rehabilitation and Resettlement purposes was a "pro-farmer step". "In the process of prolonged procedure for land acquisition, neither the farmer is able to get benefit nor is the project completed in time for the benefit of society at large.
- As per government the present changes allow a fast track process for defence and defence production, rural infrastructure including electrification, housing for poor including affordable housing, industrial corridors and infrastructure projects including projects taken up under Public Private Partnership mode where ownership of the land continues to be vested with the government.
- These projects are essential for bringing in better economic opportunities for the people living in these areas and would also help in improving quality of life.
- The existing Act vide Section 105 (read with Schedule IV) has kept 13 most frequently used Acts for Land Acquisition for the central government projects out of the purview.
- These Acts are applicable for national highways, metro rail, atomic energy projects, electricity-related other projects etc. Thus, a large percentage of farmers and affected families were denied the compensation and R&R measures prescribed under the Act.
- The government bring all those exempted 13 Acts under the purview of this Act for the purpose of compensation as well as rehabilitation and resettlement. Therefore, the amendment benefits the farmers and the affected families.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- With the changes, the R & R (rehabilitation and resettlement) and compensation provisions of the Act will be applicable to the laws including the Atomic Energy Act, 1962, the Indian Tramways Act, 1886, the Railways Act, 1989, the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 and the Damodar Valley Corporation Act, 1948.⁵

5. *Land Acquisition bill\Explained Land Ordinance 2014 Salient Features, Criticism.html*

CHAPTER 3

THE EVOLUTION OF THE LAND ACQUISITION ACT

19th century legislation to promote commercial interests of the British was amended to include social impact assessments only in 2007

The first land acquisition legislation in India was enacted by the British government in 1824. Called the Bengal Resolution I of 1824, the law applied “to the whole of Bengal province subject to the presidency of Fort William.” The law enabled the government to “obtain, at a fair valuation, land or other immovable property required for roads, canals or other public purposes.” In 1850, the British extended the regulation to Calcutta (now Kolkata), through another legislation, the Act I of 1850, with “the object of confirming the title to lands in Calcutta for public purposes”.

It was also that time when the British were building railway lines across the country, and needed some form of legislation, which would enable them to acquire land for the same. The Act XLII of 1850 “declared that Railways were public works and thus enabled the provisions of Resolution I of 1824 to be used for acquiring lands for the construction of railways.” Likewise, similar Acts in Bombay (now Mumbai) in 1839, the Building Act XXVII and Act XX of 1852 in Madras (now Chennai) were passed to facilitate land acquisition in these presidencies (within the “islands of Bombay and Colaba” and the Presidency of Fort St. George).

However, it was in 1857 that the British enacted legislation that applied to the rest of the provinces or presidencies and the whole of British India. Act VI of 1857 “repealed all previous enactments relating to acquisition and its object as stated in its preamble, was to make better provision for the acquisition of land needed for public purposes within the territories in the possession and under the governance of The East India Company and for the determination of the amount for the compensation to be paid for the same.” This act, owing to “unsatisfactory settlement”, “incompetence” and “corruption” was further amended in 1861 (Act II) and 1863 (Act XXII) and subsequently led to the enactment of Act X of 1870. The 1870 law, which for the first time, brought a mechanism for settlement (the reference to a civil court for compensation, if the collector couldn't settle by agreement), was eventually replaced by the Land Acquisition Act, 1894 (Act I of 1894). The 1894 law did not apply to princely states like Hyderabad, Mysore and Travencore, who enacted their own land acquisition legislation.

After India gained independence in 1947, it adopted the Land Acquisition Act of 1894 by the “Indian Independence (Adaptation of Central Acts and Ordinances) Order” in 1948.

Since 1947, land acquisition in India has been done through the British-era act. It was in 1998 that the rural development ministry initiated the actual process of amending the act. The Congress-led United Progressive Alliance (UPA) in its first term (2004-09) sought to amend the act in 2007 introduced a bill in parliament. It was referred to the standing committee on rural development, and subsequently, cleared by the group of ministers in December 2008, just ahead of its eventual passage. The 2007 amendment bill was passed in Lok Sabha as the “Land Acquisition (Amendment) Act, 2009” in February 2009, and the UPA returned to power for a second term in May that year. However, with the dissolution of the 14th Lok Sabha soon after, the bill lapsed. The government did not have the required majority in the Rajya Sabha to pass the bill.

The 2007 bill called for a mandatory social impact assessment (SIA) study in case of large-scale “physical displacements” in the process of land acquisition. The act ensured the eligibility of tribals, forest-dwellers and persons having tenancy rights under the relevant state laws. As per the bill, while acquiring the land, the government had to pay for loss or damages “caused to the land and standing crops in the process of acquisition” and additionally, the costs of resettlement and rehabilitation of affected persons or families. This cost or compensation would be determined by the “intended use of the land” and as per prevailing market prices.

It also sought to establish the Land Acquisition Compensation Disputes Settlement Authority at both the state and central levels “for the purpose of providing speedy disposal of disputes relating to land acquisition compensation.” Besides, the bill also proposed that land acquired as per the act which is unused for a period of five years shall be returned to the appropriate government.

After the UPA came back to power with a bigger mandate, it sought to reintroduce the bill in 2011 as the “Land Acquisition Rehabilitation and Resettlement Bill, 2011” or LARR, 2011. The bill proposed that for a private project, land could be acquired only if 80% of the affected families agree to its acquisition. For a public-private partnership (PPP) project, 70% affected families must agree. Besides, it proposed compensation for the affected parties—four times the market rate in rural areas and two times of the market rate in urban areas. It also sought to compensate artisans, traders and other affected parties through a one-time payment, even if they didn’t own land in the area considered for acquisition. The bill was passed in August 2013 as “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” and came into effect on 1 January 2014.

In May 2014, as the Bharatiya Janata Party-led National Democratic Alliance (NDA) swept to power, riding high on its development-driven agenda, it sought to bring about immediate reforms in land acquisition procedures. Without land acquisition, it argued, the government will find it difficult to execute its ambitious pet projects, including the “Make in India” programme, which seeks to revive and boost domestic manufacturing.



Land acquisition is also central to the government's thrust in infrastructure development. To facilitate its economic agenda, it promulgated the land acquisition amendment ordinance in December 2014 with a view to introducing legislation in the Budget session of parliament.

Under the proposed 2015 bill, there will be five categories which will be exempt from certain provisions of the previous act, including consent for acquisition. They are: national security and defence production; rural infrastructure including electrification; affordable housing for the poor; industrial corridors; and PPP (public private partnership) projects where the land continues to vest with the central government. These categories are also exempted from the SIA provisions, as provided for in the 2013 act.

The 2013 act facilitated land acquisition by private companies, which the 2015 bill has changed to "private entities." As per its definition, a "private entity" is "an entity other than a government entity" and includes "a proprietorship, partnership, company, corporation, non-profit organisation, or other entity under any other law."

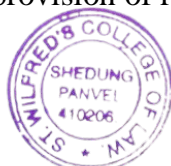
The 2015 version also removes restrictions on acquisition of land for private hospitals and private educational institutes.

CHAPTER 4 THE LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2011

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in the Lok Sabha by the Minister for Rural Development on September 7, 2011. The Bill has been referred to the Standing Committee on Rural Development (Chairperson Ms. Sumitra Mahajan). The report was due on May 11, 2012.

Highlights of the Bill¹

- The Bill provides for land acquisition as well as rehabilitation and resettlement. It replaces the Land Acquisition Act, 1894.
- The process for land acquisition involves a Social Impact Assessment survey, preliminary notification stating the intent for acquisition, a declaration of acquisition, and compensation to be given by a certain time. All acquisitions require rehabilitation and resettlement to be provided to the people affected by the acquisition.
- Compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in case of urban areas.
- In case of acquisition of land for use by private companies or public private partnerships, consent of 80 per cent of the displaced people will be required. Purchase of large pieces of land by private companies will require provision of rehabilitation and resettlement.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- The provisions of this Bill shall not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

1. Standing Committee Report on Land Acquisition (Amendment) Bill, 2007 and Standing Committee Report on Rehabilitation and Resettlement Bill, 2007; Land Acquisition, Rehabilitation and resettlement Bill, 2011

Key Issues and Analysis²

- It is not clear whether Parliament has jurisdiction to impose rehabilitation and resettlement requirements on private purchase of agricultural land.
- The requirement of a Social Impact Assessment for every acquisition without a minimum threshold may delay the implementation of certain government programmes.
- Projects involving land acquisition and undertaken by private companies or public private partnerships require the consent of 80 per cent of the people affected. However, no such consent is required in case of PSUs.
- The market value is based on recent reported transactions. This value is doubled in rural areas to arrive at the compensation amount. This method may not lead to an accurate adjustment for the possible underreporting of prices in land transactions.
- The government can temporarily acquire land for a maximum period of three years. There is no provision for rehabilitation and resettlement in such cases.

Context

Land acquisition refers to the process by which government forcibly acquires private property for public purpose. The Land Acquisition Act, 1894 (1894 Act) governs all such acquisitions. Additionally, there are 16 Acts with provisions for acquisition of land in specific sectors such as railways, special economic zones, national highways, etc. The 1894 Act does not provide for rehabilitation and resettlement (R&R) for those affected by land acquisition. Currently, the R&R process is governed by the National Rehabilitation and Resettlement Policy, 2007. In 2007, two Bills were introduced in the Lok Sabha: one to amend the Land Acquisition Act, 1894, and the other to provide statutory status to the R&R policy of 2007. These Bills lapsed with the dissolution of the 14th Lok Sabha in 2009.



Qus Singh
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

2. PRS Legislative Research, *The Land Acquisition, Rehabilitation and Resettlement Bill, 2011*, April 23, 2012

In May 2011, the National Advisory Council recommended combining the provisions of land acquisition and R&R within a single Bill. In July 2011, the Draft Land Acquisition and Rehabilitation and Resettlement Bill was published by the Ministry of Rural Development for public comments. In September 2011, the government introduced the Land Acquisition and Rehabilitation and Resettlement Bill in the Lok Sabha. This Bill will replace the 1894 Act.

Key Features

The Bill specifies provisions for land acquisition as well as R&R. Some of the major changes from the current provisions are related to:

- (a) the process of land acquisition;
- (b) rights of the people displaced by the acquisition;
- (c) method of calculating compensation; and
- (d) requirement of R&R for all acquisitions.

Public purpose

- Land may be acquired only for public purpose. The Bill defines public purpose to include: defence and national security; roads, railways, highways, and ports built by government and public sector enterprises; land for the project affected people, planned development; and improvement of village or urban sites and residential purposes for the poor and landless, government administered schemes or institutions, etc. This is broadly similar to the provisions of the 1894 Act.
- In certain cases consent of 80 per cent of the project affected people is required to be obtained. These include acquisition of land for
 - (i) use by the government for purposes other than those mentioned above, and
 - (ii) use by public-private partnerships, and
 - (iii) use by private companies.

Process of land acquisition

- The government shall conduct a Social Impact Assessment (SIA) study, in consultation with the Gram Sabha in rural areas (and with equivalent bodies in case of urban areas). After this, the SIA report shall be evaluated by an expert group. The expert group shall comprise two non-official social scientists, two experts on rehabilitation, and a technical expert on the subject relating to the project. The SIA report will be examined further by a committee to ensure that the proposal for land acquisition meets certain specified conditions.

- A preliminary notification indicating the intent to acquire land must be issued within 12 months from the date of evaluation of the SIA Report. Subsequently, the government shall conduct a survey to determine the extent of land to be acquired. Any objections to this process shall be heard by the Collector. Following this, if the government is satisfied that a particular piece of land must be acquired for public purpose, a declaration to acquire the land is made. Once this declaration is published, the government shall acquire the land. No transactions shall be permitted for the specified land from the date of the preliminary notification until the process of acquisition is completed.
- In case of urgency, the above provisions are not mandatory. The urgency clause may be used only for defence, national security, and in the event of a natural calamity. Before taking possession of land in such cases, 80 per cent of the compensation must be paid.

Compensation to the land owners

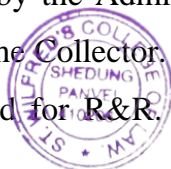
The compensation for land acquisition is determined by the Collector and awarded by him to the land owner within two years from the date of publication of the declaration of acquisition. The process of determination of compensation is given below:

First, the market value of the acquired land is computed as the higher of

- (i) the land value specified in the Indian Stamp Act, 1899 for the registration of sale deeds; or
 - (ii) the average of the top 50 per cent of all sale deeds in the previous three years for similar type of land situated in the vicinity.
- Once the market value is calculated, it is doubled for land in rural areas. There is no doubling of value in urban areas. Then, the value of all assets attached to the land (trees, buildings, etc) is added to this amount. On this amount, a 100 per cent solatium, (i.e., extra compensation for the forcible nature of acquisition), shall be given to arrive at the final compensation figure.
 - Land owners whose property is acquired using the urgency provisions shall be given an additional 75 per cent of the market value of the land.

Process of Rehabilitation and Resettlement

- The Bill requires R&R to be undertaken in case of every acquisition. Once the preliminary notification for acquisition is published, an Administrator shall be appointed. The Administrator shall conduct a survey and prepare the R&R scheme. This scheme shall then be discussed in the Gram Sabha in rural areas (equivalent bodies in case of urban areas). Any objections to the R&R scheme shall be heard by the Administrator. Subsequently, the Administrator shall prepare a report and submit it to the Collector. The Collector shall review the scheme and submit it to the Commissioner appointed for R&R. Once the Commissioner approves the R&R scheme, the



PRINCIPAL
COMMISSIONER, DEPT. OF LAND ACQUISITION
SHEDUNG-PANVEL 410206

government shall issue a declaration identifying the areas required for the purpose of R&R. The Administrator shall then be responsible for the execution of the scheme. The Commissioner shall supervise the implementation of the scheme.

- In case of acquisition of more than 100 acres, an R&R Committee shall be established to monitor the implementation of the scheme at the project level. In addition, a National Monitoring Committee is appointed at the central level to oversee the implementation of the R&R scheme for all projects.
- In case the land is being privately purchased (100 acres in rural areas and 50 acres in urban areas), an application must be filed with the Collector who shall forward this to the Commissioner for approval. After the application has been approved, the Collector shall issue awards as per the R&R scheme.

Rehabilitation and Resettlement entitlements

- Every resettled area is to be provided with certain infrastructural facilities. These facilities include roads, drainage, provision for drinking water, grazing land, banks, post offices, public distribution outlets, etc.
- The Bill also provides the displaced families with certain R&R entitlements. These include, among other things,
 - (i) land for a house as per the Indira Awas Yojana in rural areas or a constructed house of at least 50 square metres plinth area in urban areas;
 - (ii) a one-time allowance of Rs 50,000 for affected families; and
 - (iii) the option of choosing either mandatory employment in projects where jobs are being created or a one-time payment of Rs 5 lakh or an inflation adjusted annuity of Rs 2,000 per month per family for 20 years.

Other provisions

- A Land Acquisition and Rehabilitation and Resettlement Authority shall be established for settling any disputes relating to the process of acquisition, compensation, and R&R.
- There shall be no change of ownership of acquired land without prior permission from the government. Land may not be used for any purpose other than for which it is acquired.
- Acquired land which has been unused for 10 years from the date of possession shall be returned to the Land Bank of the government. If any unused acquired land is transferred to another individual, 20 per cent of the appreciated land value shall have to be shared amongst the original land owners.
- The government may temporarily occupy and use any piece of waste or arable land for a public purpose. This occupation may be for a period of not more than three years. The compensation of



Qus Singh
PRINCIPAL

SR. VILKRED. COLLEGE OF LLM
SHREDUNG-PANVEL 410206

such land may be decided mutually by the owner of the land and the Collector. Any disagreement on matters relating to compensation or the condition of the land on being returned shall be referred to the Land Acquisition and R&R Authority.

- In any district, land acquisition will be restricted to a maximum of five per cent of irrigated multi-crop land.
- The provisions of this Bill shall not apply to land acquisition under 16 existing laws. These include: the SEZ Act, 2005, Atomic Energy Act, 1962 and the National Highways Act, 1956.

Exemption of certain Acts

Absence of R&R provisions for some acquisitions

The Bill specifies 16 Acts such as the Atomic Energy Act, 1962, and the National Highways Act, 1956 which will be exempt from its provisions. The central government has the power to modify this list. The compensation and R&R provisions under some of these Acts are different from this Bill. For example, the National Highways Act and the Atomic Energy Act provide that the compensation shall be based on the market value of the land on the date the notification is published. Both these Acts do not stipulate any R&R provisions.

Purchase of land by private companies

The Bill provides that R&R provisions are mandatory for all private purchases through private negotiations if the land purchased is over 100 acres in rural areas or 50 acres in urban areas. This raises two issues

- jurisdiction of Parliament to make laws on purchase of land; and
- possible circumvention of R&R provisions.

Jurisdiction of Parliament to make laws on purchase of land

It is not clear whether Parliament has jurisdiction to require R&R on purchase of agricultural land through private negotiations. Parliament derives its power to make laws on “acquisition and requisition of property” from Item 42 of the Concurrent List. Further, “transfer of property, *other than agricultural land*, registration of documents and deeds” is included in the Concurrent List (Item 6). However, „transfer and alienation of agricultural land“ is included in the State List (Item 18). If it is interpreted that the R&R arises out of transfer of agricultural land, the issue may fall within the sole jurisdiction of state legislatures. On the other hand, if the interpretation is that this subject is primarily related to R&R, which is not specified in any of the three lists, then it may fall within the ambit of the residuary power of Parliament specified in the Union List (Item 97).



Qu Singh
 PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

Possible circumvention of R&R requirements

A private company that acquires or purchases more than 50 acres of land in urban areas or 100 acres in rural areas is required to rehabilitate and resettle affected families. This threshold can be circumvented by a private company by purchasing multiple parcels of land, each under the prescribed limit, through other entities.

Social Impact Assessment

No threshold for the SIA

The Bill requires an SIA study to be conducted for every acquisition of land. There is no minimum threshold for the land to be acquired. This could lead to delays in the implementation of various government welfare schemes such as building public toilets under the Total Sanitation Campaign or building bus shelters.

No detailed guidelines for the Expert Group appraising the SIA

The Bill provides for an independent multi-disciplinary expert group which shall evaluate the SIA. This group would be required to assess whether

- (iii) the project serves the stated public purpose;
- (iv) it is in the larger public interest; and
- (v) the potential benefits outweigh the costs and adverse impact. There are no guidelines to determine the methodology for such assessment and the Bill does not provide for such guidelines to be delegated to the Rules. This could lead to lack of consistency in the assessment of projects by different expert groups.

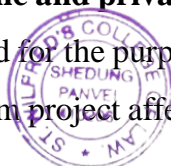
Requirement of consent from the project affected people: Consent required from project affected people and not just land owners

The Bill requires consent to be obtained from 80 per cent of the project affected people. This means groups other than owners such as agricultural labourers and sharecroppers may also be required to give their consent. This provision differs from other existing laws such as the Industrial Disputes Act, 1947, and the Companies Act, 1956. In all these Acts, in the case of closure or change of ownership of the company, consent is required to be obtained only from the owners although the livelihood interest of all the employees is protected. The Land Acquisition (Amendment) Bill, 2007 (which lapsed in 2009) required consent to be obtained from 70 per cent of the land owners and not the affected people.

Differential treatment of public and private enterprises

In the case of acquisition of land for the purpose of railways, highways, ports, power, irrigation projects, etc., requirement of consent from project affected people is applicable only to private companies and not

Qus Singh
PRINCIPAL



ST. MARK'S COLLEGE
SHEDUNG-PANVEL 410206

to PSUs. This may lead to a situation where two companies wanting to make an acquisition for the same project will have to fulfil different conditions on the basis of the nature of their ownership.

Computation of compensation paid to land owners

Basis of calculation of the market value of land in rural areas unclear

Compensation shall be calculated on the basis of the market value of land and the value of assets attached to the land. The market value of land is determined by taking into account the higher of: (i) the minimum land value in the Indian Stamp Act, 1899 or (ii) the average of the top 50 per cent of the reported sale price during the preceding three years for similar type of land in vicinity. In the case of land in rural areas, the value of land determined by this method is further doubled. A possible reason for this doubling could be to compensate for under reporting of the transacted price in registration deeds. However, this may not provide an accurate estimation of the value of the land.

Land transactions after SIA could affect the compensation amount

Transactions on the proposed land to be acquired shall be frozen from the date of issue of the preliminary notification till the time the process of land acquisition is completed. This is done to prevent sale of land just before the acquisition which could drive up prices. However, the possibility of land acquisition would be known from the time of the SIA process. This implies that there could be sale of different parcels of land in the vicinity from the time of the SIA till the issue of the preliminary notification. As the compensation for land is linked to the actual transactions in the three years prior to the preliminary notification, these sales during the SIA process may increase prices.

Subsequent transfer or sale of land

Computation of profit sharing may be difficult in some cases

If the acquired land is transferred without any development, 20 per cent of the appreciated land value must be distributed amongst the original land owners. Computation of the appreciated land value may be possible in case the transaction involves only transfer of land. However, it may be difficult to compute the value of land if the transfer is part of a larger transaction. For example, company A owns some undeveloped land as well as a number of other assets (factories, sales centres etc.) and company B takes over company A. In this case, company B will pay a consolidated price for all assets (including land) and it would be difficult to compute the price paid for land that could have been previously acquired.



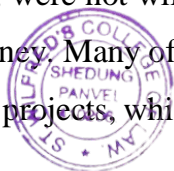
Qu Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Basics & Context:

Land acquisition refers to the process where a government acquires land from land owners for any purpose. Generally, the purpose is related to development projects conducted either by PSUs (Public Sector units) or the private sector. Prior to the passage of this Bill (and it is yet to become an Act), we had the Land Acquisition Act of 1894 which was imposed in India since the time of British rule. Under this Act, the government could acquire any land as it wishes to, in the name of "public purpose". The British had never defined the words "public purpose" in a straightforward manner, which meant that in theory as well as in practice, a government could acquire land for any purpose they wanted, and term their purpose "public purpose". After independence, this practice continued whereby Indian governments, both at the central and at the state level, acquired large amounts of land for various kinds of development and infrastructure projects, such as roads, highways, ports (air and sea), power projects (thermal, hydro and nuclear) etc. During 1947 till 1991, most of these acquisitions had been done by agencies or units in the public sector. After 1991, when liberalization had taken place, most of the land acquisition was done by the government to provide land for the private sector, either for private sector projects (infrastructure projects like power, roads etc.) but also for housing projects.

There were many issues raised against such land acquisition:

- a) No one, be it the land owners whose land was acquired (mostly farmers), nor those who may not have owned the land but whose occupations were dependent on the land acquired (mostly agricultural laborers), were compensated monetarily or otherwise as per this Act. No attempt was made for the rehabilitation or resettlement of those who had been affected by such land acquisition either.
- b) There was no requirement of any prior consent of the affected parties (those who will lose their land and/or their occupation or be affected by the pollution or environmental impacts of these infrastructure projects in future as they live nearby) for constructing any of these projects.
- c) Also, land could be acquired with just a notice by the Collector within a very short time frame where people who would be affected neither had a chance necessarily to challenge the acquisition legally, nor had a chance to find some alternate occupation or arrangements for their own. The government could acquire land in a manner it thinks fit.
- d) Most of the land was acquired in the name of India's development, but the local people found very little stake or benefits in the project. Not only were they not given much compensation or rehabilitated, they also did not get employment opportunities (which in many cases were promised to them) in the name of development of the area. In many cases, educated people from outside were able to get these jobs, while the local people did not get any kind of benefit. Once liberalization came in, companies which used to spend on health and education in the name of Corporate Social Responsibility (CSR) outside the areas affected by their projects, were not willing to spend on health and education of those affected by their own projects the same money. Many of them refused to take consideration of the externalities like pollution imposed by their own projects, while the local people also did not receive any training in many



PRINCIPAL
SHEDUNG-PANVEL 410206

cases to be fit to be employed in these development projects as well, either by the government or the project-owner (be it private or public).

There were huge protests on account of these issues, where people decided to squat illegally on government land because they had been displaced by development projects but were not rehabilitated, resettled and/or adequately compensated in any manner. In some cases like those displaced by the Hirakud dam project, there was no rehabilitation or compensation given of any sort whatsoever to these people.

On account of protests over the years against many such development projects, be it the protests against Tehri Dam, those against Sardar Sarovar dam, those against Singur or Nandigram, and many others which failed in preventing land acquisition, there were growing demands from not just the activists, but also to an extent from the corporates for a transparent and accountable land acquisition process so that while the people could get adequate compensation and would be suitably rehabilitated, corporates do not have to face delays on account of protests against land acquisition.

And it is in this context that the Land Acquisition Act (2011) was introduced, and finally passed in the Lok Sabha on 29th August 2013. Now let us analyse the highlights of the bill and also see if these have pros and cons attached to them.

Features/Highlights of the Bill:

1) When the act applies:

Cons:

The first problem here is with the fact that this act will apply only when a private project developer acquires or purchases land more than 100 acres in rural areas or 50 acres in urban areas through a private negotiation with the landowner, or when a private project developer asks the government to acquire land on his/her/their behalf. So if a private project developer wants to escape this clause, he/she will take land in multiple parcels instead of one-time acquisition, which helps him or her escape the application of this Act.

The other big joke is that if land has been acquired under sixteen previous acts, this act will not apply. These include SEZ Act (2005), Atomic Energy Act, Cantonments Act, Damodar Valley Corporation Act, Land Acquisition (Mines) Act, National Highways Act, Electricity Act and many others. This list is under 4th Schedule of this bill, and other acts can be added to this bill with just a Central govt. notification. If the intention was to ensure that acquisitions in the name of Special Economic Zones, electricity projects or mining projects should be safeguarded from the impact of this bill, what is the use of such a limited Act?

2) Requirement of consent:

In the original Land Acquisition Act (1894), there was no requirement of any consent from the original landowner in acquiring his/her land. But as per this bill, consent of 70% of the landowners is required



Qu Singh
PRINCIPAL

ST. XAVIER'S COLLEGE
SHEDUNG-PANVEL 410206

prior to acquiring land for a "public-private partnership" project, while consent of 80% of the landowners is required prior to acquiring land for a "private" project. Land can be acquired for "public purpose" only, where public purpose refers to a number of development projects: mining, infrastructure, defence, roads, railways, ports etc.

Pros: This is an improvement upon the original act, since if the majority of the landowners do not agree to the project to be established on their land, a majority of them can unite and oppose the project by not giving their consent. Hence, a major demand of the protesters has been met to a certain extent. The other big achievement is that the definition of "public purpose" is much more clearer and is related to development unlike in the past, where the government could acquire land on any pretext while terming it "public purpose".

Cons: There are some major lacunae even in the kind of provisions put up. For one, a large amount of land is acquired even today by public sector units like NTPC, BHEL or others. Yet, no public consent is required by public sector units in acquiring land, be it for mining, for power projects, for highway building or for any other purpose. This is still a failure of this act and the demand of those protesting against the previous act has still not been met in totality.

3) Adequate notice period for acquisition of land

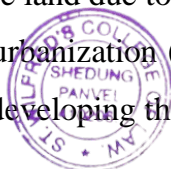
Pros:

Under the Land Acquisition Act (1894), an "Urgency Clause" could be used to acquire land overnight without any basis. However, a proper procedure is designed under this bill for both the procedure of acquisition of land and of awarding compensation and rehabilitation and resettlement award by an authority as designated by the government under the bill.

4) Compensation for those affected by land acquisition:

As per the Land Acquisition Act (1894), nobody affected by the land acquisition process, be they the landowners or those whose occupations were dependent on the land originally or even those whose lives or livelihoods were to be affected by the project for which land is acquired in future for a variety of reasons (such as land, water and/or air pollution) would be compensated. This bill provides a monetary compensation of up to four times the market value in rural areas, and up to two times the market value in urban areas for farmers/landowners. Compensation is also to be provided for the market price of the buildings standing on the land, and also a solatium amount is to be provided to farmers in case they are losing standing crops on account of the acquisition process.

The bill also makes an attempt at providing non-monetary compensation such as land-for-land for many cases, such as for a landowner when his/her land is acquired for an irrigation project, those who are SC/ST landowners and who lose land due to land acquisition for any project, and those whose lands are taken away for the process of urbanization (20% of their land acquired at a price commensurate with price of acquisition + price of developing the land). Landowners avail of these provided they are ready



PRINCIPAL
SHRI. W. P. SINGH
SHREDUNG-PANVEL 410206

to forego a part of their compensation amount in lieu of these facilities.

The bill allows for land to be not only acquired but if required, leased by the landowner so that the landowner can continue to retain ownership while earning money from the project developer, such as in case of renewable energy projects.

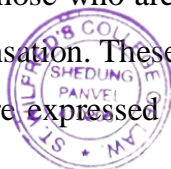
Pros: Again, there is an improvement upon the original act which did not provide any kind of compensation (monetary/non-monetary) to those affected by the land acquisition process. This bill makes a start, compensating those who will be affected by land acquisition prior to the setting up of the infrastructure or development project, monetarily and in some cases, non-monetarily. The bill also provides land-for-land compensation in certain cases. Also, the clause of lease means that the landowner at least need not lose land ownership, although others may lose their livelihoods in the process and have to be adequately compensated and rehabilitated.

Cons: The bill has been criticized mainly on two accounts.

First, there is a huge debate on account of whether such compensation amount would be enough or not. Activists argue that prior to the coming up of a development project, the market price is quite low particularly in rural areas or semi-urban areas, and so the compensation amount (up to 4 times the market price) may be too little for a landowner/farmer who is losing his/her livelihood in a big way. Corporates argue on the other hand that this compensation amount is too high particularly in urban areas where the prices may already be very high. They also state that once it is announced that a development project is going to be constructed in a particular place, the market price of that land increases significantly for any area (rural/urban) and so, the compensation amount would be too high to provide for a private producer or the government. Activists however reject this argument by stating that it would be a little share of the overall investment in the project and so would not affect the project budget significantly. Still, a compensation of up to only 4 times the market price seems low, and many Member of Parliaments suggested that this should be increased to at least 5 to 20 times the market price in at least rural areas if not urban.

Second, those who would be affected after the establishment of the project, they have not been considered at all in the bill although one could say that this was not the primary purpose of the bill, and second, one could address these through proper implementation and enforcement of the environment regulations for air and water (if not for land). There are issues with those norms though, but for once, this is a secondary problem with the bill itself.

There are other issues however, such as that compensation should not be denied/reduced even if land-for-land is provided, and that those who are losing their livelihood because of land acquisition should also be given monetary compensation. These are major issues which remain unaddressed in this version of the bill. Also, concerns were expressed by a few MPs notably the Leader of Opposition Sushma



Principal
S. WILFREDO COLLEGE OF LAW
SHREDUNG-PANVEL 410206

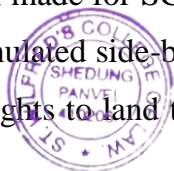
Swaraj in the Lok Sabha, that many landowners who become rich overnight on getting compensation money do not understand what to do with this excess money and use it to buy cars and vehicles rather than invest it in some productive activity. That concern also remains.

5) Rehabilitation and Resettlement:

Pros:

Under the Land Acquisition Act (1894), again no provision was there for rehabilitating or resettlement of those who would be losing their ownership of land or livelihoods associated with the land acquired for any project. But under this bill, a number of provisions have been made for rehabilitation and resettlement of all those affected by land acquisition in any manner (loss of ownership and/or loss of livelihoods):

- a) A housing arrangement would be provided for those who either lose their homes built on the land acquired or who have been living on the land but don't have a home for themselves. Moreover, those not opting for the house would get a one-time financial assistance for constructing the home of Rs. 1,50,000/- .
- b) In addition to land-for-land as compensation for landowners, those losing their land and/or their livelihoods on account of land acquisition can ask for one of the following: employment of at least one person within their family within the project coming up, a one-time monetary compensation of up to Rs. 5,00,000/- or annuity of up to Rs. 20,000 per family per month for up to 20 years, indexed to Consumer Price Index for Agricultural Workers (CPI-AW).
- c) A monthly subsistence amount shall be granted to all those families displaced from the land acquired. This amount would be up to Rs. 3,000/- per month for a year from the date on which the Award is given. SC/ST families displaced from Scheduled Areas will receive Rs. 50,000/- for subsistence.
- d) Each affected family will receive a transport amount of up to Rs. 50,000/- one-time for transport of all necessary things to the place of rehabilitation and resettlement. Also, those losing a cattle shop or petty shop will be paid a minimum of Rs. 25,000/- per one such shop they lose.
- e) Those whose land has been acquired against their wish and who belong to a family having artisans, small trader or self-employed family and who are affected by land acquisitions, their families shall receive a minimum of Rs. 25,000/- each as compensatory-cum-rehabilitation allowance.
- f) A one-time "Resettlement Allowance" of Rs. 50,000/- will be granted.
- g) Fishing rights would be allowed as per government notification for those whose fishing activities would be affected by the construction of hydro power or irrigation projects.
- h) Land allotted to those who have opted for it will be jointly registered in the name of husband and wife and would be free from all encumbrances.
- i) Special provisions have been made for SC/ST families whose land is appropriated under this Act. A Development Plan will be formulated side-by-side with the acquisition process, with the plan focusing on giving these families title rights to land to be given to them, a plan for development of alternative



PRINCIPAL
ST. XAVIER'S COLLEGE OF WOMEN
SHEDUNG-PANVEL 410206

fuel, fodder and non-timber forest produce on non-forest land on which they will be settled. Moreover, in cases where the Gram Sabha under PESA (Schedule V) has consented to land acquisition, all SC/ST affected families will be paid one-third of compensatory amount in the first installment, and two-thirds after the land is acquired. Land given to these families would be given as per government notification with a part to be given for free for their community activities. Not to forget, if land acquisition is done on behalf of a Requiring body or if the SC/ST family has to be rehabilitated outside their original district, then an additional 25% of the compensatory amount shall be paid to such families as "Rehabilitation and Resettlement Allowance."

j) Finally, Reservation benefits shall continue to be enforced for such families and moreover, all entitlements or acts enjoyed by them prior to land acquisition on their original owned land will continue to be enjoyed by them after land acquisition when they are rehabilitated elsewhere, even if the area they currently live in does not enjoy those rights, such as PESA (Schedule V).

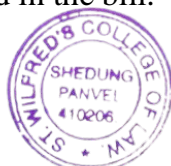
These are of course, huge advantages, considering the kind of benefits which have been bestowed on not just SC/ST families but in general on landowners and land-affected people. In addition, the government has prepared a list of amenities which have to be provided and whose cost has to be borne by the project developer, to those being resettled and rehabilitated: roads within the resettled villages and an all-weather road link to the nearest pucca road, passages and easement rights for all the resettled families be adequately arranged; Proper drainage as well as sanitation plans executed before physical resettlement; one or more assured sources of safe drinking water for each family as per the norms prescribed by the Government of India grazing land as per proportion acceptable in the State and many more as mentioned in Schedule III of the Act.

In other words, a huge number of benefits are laid out to be enjoyed by those within this Act. Then are there any cons? Yes.

Cons:

- First of all, there is no making of these provisions as mandatory, and the project developer can say that he/she is not in a position to do so with reasons, the project developer is not mandated really to provide these provisions.
- Second, there is no clear idea of the timeline under which these facilities are to be provided. For example, amendments were moved by various MPs that these facilities should be made ready at least six months prior to actual land acquisition so that those who will be displaced or affected can be sure if the amenities provided for them are adequate or not, and if not satisfied or if having genuine grievances, can ask for a redressal of these prior to actual land acquisition. None of those were accepted and added in the bill.

6) Social Impact Assessment:



Qu Singh
 PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

Pros:

A major point in this bill is that on the lines of Environmental Impact Assessment done prior to obtaining Environment Clearances from MoEF, this bill requires that a Social Impact Assessment be done by an Expert Group appointed by the respective State government. The Expert Group can ask for land acquisition not to be done provided it is satisfied that the project is not in public interest, the costs outweigh the benefits or it does not serve the stated public purpose. The Expert Group has to assess the impact of the project on various things such as grazing land, transport, housing, lives of people, their occupations, their ownership, their economic conditions, physical infrastructure (drainage, roads, water availability, sanitation etc.) and many other things. A public hearing must also be held prior to the final SIA report formed, which should also include the minutes of the hearing.

7) Acquisition of Multi-Cropped Land:**Pros:**

Only in extreme circumstances, where multi-cropped land has to be acquired at any cost, only 5% of the total multi-cropped land in the district can be acquired and not more. Otherwise, multi-cropped land should not be acquired. This is done for the purpose of ensuring that food security needs are not threatened. This is better compared to allowing multi-cropped land acquisition in any case whatsoever. State governments can set additional conditions or modify those set in this bill as per their own requirement.

CHAPTER 5

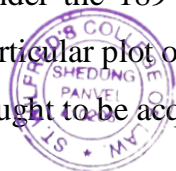
**SIGNIFICANCE OF THE NEW TITLE 'THE RIGHT TO FAIR COMPENSATION AND
TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT
BILL**

The title of the old law conveyed that its primary purpose was to expedite the acquisition of land. However, the principle objective of the new Bill is fair compensation, thorough resettlement and rehabilitation of those affected, adequate safeguards for their well-being and complete transparency in the process of land acquisition. The title has been amended to reflect this.¹

Need for a new Bill

There is unanimity of opinion across the social and political spectrum that the current Law (The Land Acquisition Act 1894) suffers from various shortcomings. Some of these include:

- Forced acquisitions: Under the 1894 legislation once the acquiring authority has formed the intention to acquire a particular plot of land, it can carry out the acquisition regardless of how the person whose land is sought to be acquired is affected.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- No safeguards: there is any real appeal mechanism to stop the process of the acquisition. A hearing (under section 5A) is prescribed but this is not a discussion or negotiation. The views expressed are not required to be taken on board by the officer conducting the hearing.
- Silent on resettlement and rehabilitation of those displaced: There are absolutely no provisions in the 1894 law relating to the resettlement and rehabilitation of those displaced by the acquisition.

1. Land Acquisition bill\All you wanted to know about new land acquisition Bill - Livemint.html

- Urgency clause: This is the most criticised section of the Law. The clause never truly defines what constitutes an urgent need and leaves it to the discretion of the acquiring authority. As a result almost all acquisitions under the Act invoke the urgency clause. This results in the complete dispossession of the land without even the token satisfaction of the processes listed under the Act.
- Low rates of compensation: The rates paid for the land acquired are the prevailing circle rates in the area which are notorious for being outdated and hence not even remotely indicative of the actual rates prevailing in the area.
- Litigation: Even where acquisition has been carried out the same has been challenged in litigations on the grounds mentioned above. This results in the stalling of legitimate infrastructure projects.
- Recent observations by the Supreme Court: Justice Ganpat Singhvi of the Supreme Court has observed, in the wake of repeated violations that have come to light over the last few months, that the law has “become a fraud”. He observed that the law seems to have been drafted with “scant regard for the welfare of the common man”.
- Another bench of the Supreme Court has echoed this sentiment in its observation that “The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the land owners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected ... To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A of the Constitution. We expect the law making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”



Qu Singh
 PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

Government need to acquire land for private companies as well as public-private partnership projects

- Land Records in most parts of the country are fragmented and disorganised. In most cases they haven't been updated for decades. The new law overcomes that by ensuring the Collector updates the land records and also pays up to four times the value to correct any inaccuracies.
- If land is purchased then there are no benefits for livelihood losers who are usually far greater in number than the land owners. This Bill ensures that they are taken care of and not simply displaced.
- The inequality in terms of bargaining power between large-scale corporations and small farmers and other marginalised groups increases the likelihood of unfair agreements. Contracts tend to be signed in favour of the party negotiating from a greater position of strength. That is why government is required to bridge the gap and bring balance to this relationship.
- A legitimate need for acquisition by the state itself (to build public goods such as roads, schools and hospitals) can be undermined and stalled by groups with vested interests. If there is no sovereign power to compel these groups, a single individual or group of individuals can hold a process hostage merely by refusing to part with land. Further, in times of crisis such as war, famine and floods, coupled with absence of legislation clarifying and guiding the state's exercise of 'eminent domain', situations can emerge jeopardising human lives.

Highlights of the new Bill²

- Compensation: Given the inaccurate nature of circle rates, the Bill proposes the payment of compensations that are up to four times the market value in rural areas and twice the market value in urban areas.
- R&R: This is the very first law that links land acquisition and the accompanying obligations for resettlement and rehabilitation. Over five chapters and two entire Schedules have been dedicated to outlining elaborate processes (and entitlements) for resettlement and rehabilitation. The Second Schedule in particular outlines the benefits (such as land for land, housing, employment and annuities) that shall accrue in addition to the one-time cash payments.

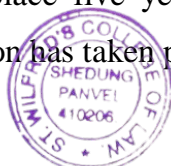
1. Land Acquisition bill\All you wanted to know about new land acquisition Bill - Livemint.html

- Retrospective operation: To address historical injustice the Bill applies retrospectively to cases where no land acquisition award has been made. Also in cases where the land was acquired five years ago but no compensation has been paid or no possession has taken place then the land acquisition process will be started afresh in accordance with the provisions of this act.

- Multiple checks and balances: A 'comprehensive, participative and meaningful' process (involving the participation of local Panchayati Raj institutions) has been put in place prior to the start of any acquisition proceeding. Monitoring committees at the national and state levels to ensure that R&R obligations are met have also been established.
- Special safeguards for tribal communities and other disadvantaged groups: No law can be acquired in scheduled areas without the consent of the Gram Sabhas. The law also ensures that all rights guaranteed under such legislation as the Panchayat (Extension to Scheduled Areas) Act 1996 and the Forest Rights Act 2006 are taken care of. It has special enhanced benefits (outlined in a dedicated chapter) for those belonging to Scheduled Castes and Scheduled Tribes.
- Safeguards against displacement: The law provides that no one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared. The Third Schedule even lists the infrastructural amenities that have to be provided to those that have been displaced.
- Compensation for livelihood losers: In addition to those losing land, the Bill provides compensation to those who are dependent on the land being acquired for their livelihood.
- Consent: In cases where PPP projects are involved or acquisition is taking place for private companies, the Bill requires the consent of no less than 70% and 80% respectively (in both cases) of those whose land is sought to be acquired. This ensures that no forcible acquisition can take place.
- Caps on acquisition of multi-crop and agricultural land: To safeguard food security and to prevent arbitrary acquisition, the Bill directs states to impose limits on the area under agricultural cultivation that can be acquired.
- Return of unutilized land: In case land remains unutilized after acquisition, the new Bill empowers states to return the land either to the owner or to the State Land Bank.
- Exemption from income tax and stamp duty: No income tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the new law.
- Share in appreciated land value: Where the acquired land is sold to a third party for a higher price, 40% of the appreciated land value (or profit) will be shared with the original owners.

Protection of interests and concerns of farmers

- Retrospective effect: Where awards are made but no compensation has been paid or possession has not been taken, compensation shall be paid at the rate prescribed under the new Act. Where the Award has not been made the entire process shall be considered to have lapsed. Also where acquisition has taken place five years prior to the commencement of the new law but no compensation/ possession has taken place the proceedings shall be deemed to have lapsed.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- Consent: Prior-consent shall be required from 70% of land losers and those working on government assigned lands only in the case of public-private partnership projects and 80% in the case of private companies. This consent also includes consent to the amount of compensation that shall be paid.
- Return of unutilized land: Land not used can now be returned to the original owners if the state so decides.
- Share in sale of acquired land increased: The share that has to be distributed among farmers in the increased land value (when the acquired land is sold off to another party) has been set at 40%.
- Income-tax Exemption: All amounts accruing under this act have been exempted from income tax and from stamp duty.
- Strict restrictions on multi-crop acquisition: The acquisition of agricultural land and multi-crop land has to be carried out as a last resort. There will be definite restrictions on the extent of acquisition of such land in every state to be determined by the States concerned.
- Safeguards to ensure fair price: Given the way in which market value is to be calculated and the imposition of a solatium of 100% over and above the amount, the farmers are guaranteed a fair price for their land.
- Acquisition only if necessary: The Collector has to make sure that no other unutilized lands are available before he moves to acquire farm land.
- Damage to crops to be included in price: The final award has to include damage to any standing crops which might have been harmed due to the process of acquisition (including the preliminary inspection).
- Share in developed land: In case their land is acquired for urbanization purposes 20% of the developed land will be reserved and offered to these farmers in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development.
- Fishing rights: In the case of irrigation or hydel projects, affected families may be allowed fishing rights in the reservoirs.
- Additional R&R benefits: Farmers are also entitled to the various rehabilitation and resettlement benefits which are enumerated in response to question 2.
- Time-bound social impact assessment: The Bill mandates a social impact assessment of every project which must be completed within a period of six months.

Rehabilitation and resettlement provisions for farmers, landless and livelihood losers

- Reduced qualifying criteria: To qualify for benefits under this Act the time period has been reduced to three years of dependence (on the acquired land) from five.
- Affected family to include tenants: The definition of affected family includes agricultural labourers, tenants including any form of tenancy or usufruct right, share-croppers or artisans who



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

may be working in the affected area for three years prior to the acquisition, whose primary source of livelihood stands affected by the acquisition of land.

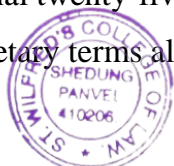
- Houses for all affected families: All affected families are entitled to a house provided they have been residing in an area for five years or more and have been displaced. If they choose not to accept the house they are offered a one-time financial grant in lieu of the same.
- Choice of annuity or employment: All affected families are given a choice of annuity or employment;
 - If employment is not forthcoming they are entitled to a one-time grant of Rs.5 lakh per family.
 - Alternatively they will provided with an annuity payment of Rs.2,000 per month per family for 20 years (this will be adjusted for inflation).
- Subsistence allowance: All affected families which are displaced from the land acquired shall be given a monthly subsistence allowance equivalent to Rs.3,000 per month for a period of one year from the date of award.
- Training and skill development: All affected families are also given training and skill development while being offered employment.
- Miscellaneous amounts: All affected families are given multiple monetary benefits such as transport allowance of Rs.50,000 and resettlement allowance of Rs.50,000.
- One-time financial assistance: Each affected family of an artisan, small trader or self-employed person shall get one-time financial assistance of such amount as the appropriate government may, by notification, specify subject to a minimum of Rs.25,000.
- R&R to be completed in all aspects for irrigation projects: In case of acquisition of land for irrigation or hydel project the rehabilitation and resettlement shall be completed six months prior to submergence of the lands proposed to be so acquired.
- Possession upon fulfilment of conditions under Act: The Collector shall take possession of land only ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements commencing from the date of the award. However, families will not be displaced from this land till their alternative R&R sites are ready for occupation.
- Time Limit for provision of R&R entitlements: The components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of 18 months from the date of the award.



Qu Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Protection of interests and concerns of scheduled castes and scheduled tribes

- Separate chapter: A separate Chapter has been carved out to protect interests of tribals and those belonging to the Scheduled Castes. Where acquisition does take place it shall be done as a demonstrable last resort.
- Approval: As far as possible no acquisition shall take place in the Scheduled Areas. And where such acquisition does take place it has to be done with the approval/ consent of the local institutions of self-governance (including the autonomous councils where they exist).
- Development plan: A Development Plan has to be prepared laying down the details of procedure for settling land rights due but not settled and restoring titles of tribals on alienated land by undertaking a special drive together with land acquisition. The Plan must also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.
- One-third to be paid up-front: In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families at the outset as first instalment and the rest shall precede the taking over of the possession of the land.
- Resettlement in the same scheduled area: The Scheduled Tribes affected families shall be resettled preferable in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.
- Land for community: The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.
- Alienation of tribal lands to be void: Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void: and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be available to the original tribal land owners or land owners belonging to the Scheduled Castes.
- Fishing rights: The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes families having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.
- If resettled outside scheduled area then additional benefits: Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district then they shall be paid an additional twenty-five per cent rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees.



ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- Higher land-for-land area for SCs/STs: In every project those losing land and belonging to the Scheduled Castes or Scheduled Tribes will be provided land equivalent to land acquired or two-and-a-half acres, whichever is lower (this is higher than in the case of non-SC/ST affected families)
- Additional amounts: In addition to a subsistence amount of rupees 3000 per month for a year (which all affected families get), the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to rupees 50,000.

Protection of interests and concerns of Panchayati Raj Institutions

- SIA in consultation with PRIs: The Social Impact Assessment (SIA) has to be carried out in consultation with the representatives of the Panchayati Raj Institutions (PRIs). In fact, the appropriate Government is required by the law to ensure adequate representation of these institutions during the discharge of the process.
- SIA reports to be shared: Reports prepared under the Social Impact Assessment are to be shared with these individuals in their local language along with a summary.
- Representation in expert group: The expert group has to have two members belonging to the Panchayati Raj Institutions. This is a powerful body that has the power to reject a project.
- Hearings in all gram sabhas: In case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha where more than twenty five per cent of land belonging to that Gram Sabha is being acquired.
- Consultation in compliance with PESA: Consultation with the Gram Sabha in scheduled areas under the Fifth Schedule referred to in the Constitution shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.
- Representation of panchayat chairpersons on R&R committee at project level: The Rehabilitation and Resettlement Committee at Project Level has to have the chairpersons of the Panchayats located in the affected area or their nominees as representatives.
- Panchayat ghars have to be provided as per the list of Infrastructural amenities given in the Third Schedule.

Protection of states interests and concerns

- Only a baseline: The Bill only provides the baseline for compensation and has devised a sliding scale which allows States to fix the multiplier (which will determine the final award) depending on distance from urban centres.
- Choice for return to land bank or owner: Where unutilized land is returned the state can decide whether it goes to the original owner or to the land bank.
- Threshold for private purchase left to government: While the Bill requires the discharge of obligations related to Resettlement and Rehabilitation (R&R), even in the case of private purchase



D. Singh
 PRINCIPAL
 ST. MARY'S COLLEGE
 SHEDUNG-PANVEL 410206

provided the purchase exceeds a certain threshold, it leaves the said threshold to the discretion of the state governments.

- In extreme cases, equivalent amount for multi-crop land: While the Bill seeks to discourage acquisition of irrigated multi crop or agricultural land it gives the choice of earmarking how much of such lands should be reserved for protection against acquisition to the States. Furthermore if no alternative land is available to replace the multi-crop land acquired, the state can instruct the payment of an equivalent amount.
- R&R procedure at discretion of state: The procedure related to the functioning of the R&R committee at project-level has been left to the state government if the acquisition is by the state.
- States free to enact other laws: The state governments are free to enact any law to enhance or add to the entitlements enumerated under the Bill which confers higher compensation than payable under the Bill or make provisions for rehabilitation and resettlement which are more beneficial than those provided under the Bill.

Working of compensation mechanism

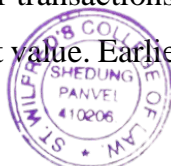
- In urban areas there is no multiplier. This means no enhancement of the market value calculated occurs. However a solatium of 100% (which currently exists at 30%) is imposed on this market value calculated. This 'solatium' amount is a compensation to ameliorate the pain of forcible acquisition.
- In rural areas the multiplier has been left entirely to the discretion of state governments which may range on a sliding scale from 1 to 2 depending on the radial distance from urban centres.

Safeguards in the law to ensure food security

- Special provisions have been inserted in the Law to ensure that multi-crop land is acquired only as a last resort.
- States are also required to impose limits on the area of agricultural/ multi-crop land that can be acquired in a State. No acquisition of such lands in excess of that limit can take place.
- When acquiring agricultural land, the state has to cultivate an equivalent area of land elsewhere as agricultural land. If they cannot do this then they must deposit an amount equivalent to its value in an account to be used for the purposes of enhancing food security.

Investor concerns addressed

- Consent: In the case of public-private partnership projects consent has been reduced from 80% to 70%. In addition only the consent of land owners is required.
- Definition of market value has been amended to ensure that acquisition price doesn't form the basis for compensation calculation in future acquisitions. Also power has been given to the Collector to not consider transactions which he feels are outliers and not indicative of true value while calculating market value. Earlier there was a danger of a price spiral as (a multiple of) price



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

of first acquisition in an area would go into calculation of land price for any subsequent acquisitions

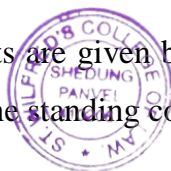
- States given large flexibility: A sliding scale will give states flexibility to fix compensation in rural areas (between two and four times market value), depending on their distance from urban areas. Earlier compensation in rural areas was to be four times market value.
- Restrictions/thresholds on amount of irrigated multi-crop land and net sown area per district or state available for acquisition left to the discretion of states. Earlier amount of irrigated multi-cropped irrigated land that could be acquired was capped at 5%, and amount of net sown area that could be acquired was also capped.
- Land size thresholds on when R&R on private purchase of land becomes applicable has now been left to the discretion of States. Earlier R&R on private purchases was to apply to all acquisitions above 100 acres in rural areas and 50 acres in urban areas.
- Payment for R&R costs by acquirer made a 'one-off' acquirer to put all monies in an escrow account, and ongoing commitments like annuities and benefits to be administered by agency established under this Act. Earlier the Buyer would have had to pay and be involved with R&R infrastructure building until complete, and R&R annuities to perpetuity. However, families will not be displaced from this land till their alternative R&R sites are ready for occupation.
- Collector can be considered appropriate government: In cases where the land sought to be acquired is below a certain threshold then the Collector can be the acquiring authority.

Reasons for 157 amendments being made to this Bill

- It must be understood that most of these amendments are non-consequential in nature. Out of these 157 amendments, 103 amendments are typographical/ definitional, 28 amendments are minor in nature and only 26 Amendments are substantive in nature. This classification is explained below.
- Substantive changes: These are significant changes. They bring about new provisions or thoroughly alter existing provisions on any area. Example: Changes in quantum of consent required, process for determining compensation etc.
- Minor changes: These are changes which are new additions but are of such a nature that they do not alter the provisions of the Bill as it was originally drafted. Example: adding time limits to existing processes. These do not fundamentally alter the process.
- Typographical /nomenclature/ definitional changes: These are minor modifications which correct errors in type or clarify definitions which already exist. Example: replacing the term 'project affected persons' with 'project affected families'.

26 substantive amendments

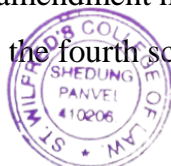
The 26 substantive amendments are given below. 13 amendments that have been made in accordance with the recommendations of the standing committee are as follows:



Qu Singh

PRINCIPAL
ST. XAVIER'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- Revised definition of public purpose and revised consent requirements: Given the observations made by the standing committee that the definition of public purpose needed reworking, an amendment has been made which collates the previously scattered definition of public purpose and streamlines it to make it easier to understand.
- Restrictions on multi-crop land acquisition left to the states: In response to the recommendations made by the standing committee that since states better understand the peculiar and unique circumstances in their regions, the fixation of the cap should be left to them, an amendment has been made to allow state governments to fix the limits on the acquisition of multi-crop land.
- Restrictions on agricultural land acquisition left to the states: In response to the recommendations made by the standing committee that since states better understand the peculiar and unique circumstances in their regions, the fixation of the cap should be left to them, an amendment has been made to allow state governments to fix the limits on the acquisition of agricultural land.
- Restrictions on private purchase of land left to the states: In response to the recommendations made by the standing committee that since land purchase falls within the legislative domain of the States they should be allowed to fix the limits of private purchase. If these limits are crossed then the rehabilitation and resettlement provisions of this law will apply.
- Second amendment on restriction of private purchase: A second amendment in furtherance of the preceding amendment has been made to empower states in the fixation of purchase limits.
- Additional compensation in case of double displacement: A new section has been inserted to provide for additional compensation if an affected family is displaced twice.
- Special provisions for scheduled castes and scheduled tribes: Special provisions have been inserted specifically for scheduled castes and scheduled tribes in the body of the Act. These include greater benefits and enhanced safeguards.
- Provision for reservation and other benefits: This amendment has been inserted specifically for scheduled castes and scheduled tribes in the body of the Act in continuation of the previous amendment.
- State-level monitoring committee: A state-level monitoring committee has been established on the recommendations of the standing committee to provide supervision over R&R functions.
- Period for return of unutilized land reduced: The period for the return of unutilized land has been reduced to 5 years from 10 years.
- Unutilized land may be returned to the original owners: An amendment has been made which allows the state governments the option to return the land to the original owners if they so decide.
- Extension of the new law to exempted Acts: In response to the recommendation made by the standing committee, an amendment has been made to extend the provisions of this Act to all the exempted legislations in the fourth schedule within a period of one year of its commencement.

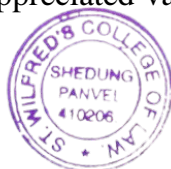


PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- The provisions relating to scheduled castes and scheduled tribes have been removed from the schedule to the law: And brought into the main legislation as recommended by the Standing Committee.

The 13 amendments have been made in accordance with the recommendation of the group of ministers are as follows:

- Deposit of amount in case of acquisition of agricultural land: A new amendment allows states the option, while acquiring agricultural land, to deposit an amount equivalent to the value of the agricultural land acquired if they are unable to find alternative land to cultivate in lieu of the acquired agricultural land (this was the original requirement).
- Retrospective operation: To correct historical injustices, a retrospective clause allowing certain classes of individuals to benefit from enhanced compensation and rehabilitation and resettlement has been provided for.
- Revised social impact assessment process: A revised provision for a more thorough social impact assessment process in consultation with unutilized raj institutions has been drafted.
- Power to override recommendations of expert group: It was felt by many individuals that a non-elected group of individuals should not be given final authority over whether acquisition should be allowed to proceed or not. As a result an amendment has been made to allow the Government concerned to override them but only if they have sufficient reasons that are recorded in writing.
- New responsibilities for the collector: New amendments have been made to ensure the collector updates the land records so that compensation can be paid on true and accurate values.
- Power to appropriate government to raise R&R: An amendment has been made to enable the appropriate government to raise the rate of rehabilitation and resettlement to take into account for inflation.
- Power to taking possession only after satisfying obligations: Section 37 which deals with taking possession of the land has been strengthened to ensure that the collector shall only take possession of the land “after ensuring that” the compensation/ R&R responsibilities have been discharged.
- Waiver of income tax and stamp duty: To further ameliorate the suffering of displaced families, the Act has exempted them from the payment of income tax and stamp duty for amounts received under this law.
- Power to divert land in exceptional cases: If land acquired for one purpose cannot be used for that purpose due to an unforeseen calamity, then the appropriate government may use it for another purpose.
- Increase in share of appreciated value: If the government after acquiring the land sells it to a third party then 40% of the appreciated value will be shared with the original owners. This has been increased from 20%.

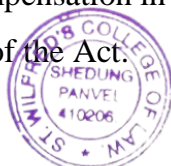


PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- Limit on benefit from sale of acquired land: In addition to the preceding amendment, an additional amendment has been made to limit this benefit to only the first time the land is sold after acquisition.
- Multiplier to calculate compensation: Flexibility has been given to the states to fix the multiplier by which the compensation will be calculated. In other words states can give up to four times the market value but it can be lower if they chose to fix a lower multiplier.
- Offer for developed land: A new amendment has been made which provides that in the case of acquisition for urbanisation purposes, 20% of the developed land will be reserved and offered to the original owners at a price equal to the cost of acquisition and development.

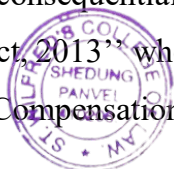
Bill as introduced in Lok Sabha

1. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein referred to as the Fair Compensation in Land Acquisition Act) was enacted to provide for just and fair compensation to the owners of the land and affected families for the land acquisitions made under the said Act and the 13 Acts specified in the Fourth Schedule, which makes provision for acquisition of land for the purposes specified in the respective Acts, in terms of the provisions made in the First, Second and Third Schedule to the Fair Compensation in Land Acquisition Act. In other words, the benefits of compensation, rehabilitation and resettlement provided in the Fair Compensation in Land Acquisition Act is proposed to be extended in cases of land acquisition made under the Acts specified in the Fourth Schedule.
2. In view of the deadline provided in Section 105 of the Fair Compensation in Land Acquisition Act and the necessity of extending the enhanced compensation, rehabilitation and resettlement to land acquisitions under thirteen Acts of the Fourth Schedule and to make necessary provisions for infrastructure projects the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated on the 31st December, 2014. On the 24th February, 2015 a replacement Bill was introduced in Lok Sabha. The Bill was passed by Lok Sabha with some amendments on the 10th March, 2015. Notice for Motion for consideration and passing of the Bill as passed by the Lok Sabha was given in Rajya Sabha on the 13th March, 2015. However, the Bill could not be taken up for consideration in the Rajya Sabha as the Rajya Sabha was prorogued on the 28th March, 2015.
3. Section 105 of the Act of 2013 as amended by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 extends the benefit of enhanced compensation in case of land acquisition made under the thirteen Acts listed in the Fourth Schedule of the Act.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

4. Section 105 of the Act of 2013 as amended by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 provided to extend the benefit of enhanced compensation, rehabilitation and resettlement in case of land acquisitions done under the 13 Acts listed in the Fourth Schedule of the Act. With a view to give continuity to the provisions of the said Ordinance, it was necessary to repromulgate the Ordinance and get the same replaced by the Replacement Bill in Parliament so that enhanced compensation and rehabilitation and resettlement made available through the provisions of earlier Ordinance continue to remain in force in cases of land acquisitions made under the thirteen Acts listed in the Fourth Schedule to the Act of 2013.
5. As the Council of States was not in session and immediate action was required to be taken by the Central Government to give continuity to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 and to expedite the process of land acquisition, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (No. 4 of 2015) was promulgated on 3rd April, 2015.
6. The said Ordinance contains enabling provision necessary to expedite the process of land acquisition for strategic and development activities, such as, national security or defence of India including preparation for defence and defence production; rural infrastructure including electrification; affordable housing and housing for poor people; industrial corridors set-up by the appropriate Government and its undertakings (in which case the land shall be acquired up to one kilometre on both sides of designated railway line or roads for such industrial corridor); infrastructure projects including projects under public private partnership where the ownership of the land continues to vest with the Government, it is proposed to continue with the "Consent" clause provided under sub-section (2) of section 2 of the Fair Compensation in Land Acquisition Act in case of the acquisitions provided in the Act except in cases provided above.
7. Further, to ensure the growth and development of the country, while safeguarding the welfare of farmers, it is proposed to empower the appropriate Government to exempt them from "Social Impact Assessment" and "Special Provisions for Safeguarding Food Security" provisions of the Fair Compensation in Land Acquisition Act. However, the appropriate Government shall, before the issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project. The appropriate Government shall undertake a survey of its wasteland including arid land and maintain a record containing details of such land, in such manner as may be prescribed by the appropriate Government.
8. It is proposed to make consequential amendment by substituting the "Companies Act, 1956" with the "Companies Act, 2013" where the word "Company" has been defined. At present, the provisions of the Fair Compensation in Land Acquisition Act extend to "private company"



Principal
 SHREDUNG PANVEL COLLEGE OF LAW
 SHREDUNG PANVEL 410206

thereby excluding others like public company, proprietorship, partnership, nonprofit organisation, etc. Therefore, in place of the term “private company”, the term “private entity” is proposed to be substituted and defined accordingly.

9. It is proposed to exclude all such period, that is the period during which the proceedings for acquisition of the land have been held up on account of any stay or injunction issued by any court, or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in designated account maintained for this purpose, in calculation of five years period as specified in sub-section (2) of section 24 of the Fair Compensation in Land Acquisition Act, arising out of the Land Acquisition Act, 1894.
10. Section 31 of the Act is proposed to be amended so that in the Rehabilitation and Resettlement Award passed by Collector for affected families, compulsory employment to at least one member of such affected family of a farm labourer is also included.
11. Section 46 is proposed to be modified so that the rehabilitation and resettlement benefits are available to land owners in case of purchase of land through private negotiations by non-governmental entities.
12. A new Section 67 A is proposed to be inserted in the Act mandating that the Land Acquisition, Rehabilitation and Resettlement Authority shall hold the hearing in the district where the land acquisition takes place for settlement of the objections raised in the reference under section 64 of the Act.
13. Section 87 is proposed to be amended to provide that the court shall take cognizance of offence by Government officials under the Act in accordance with the procedure laid down in section 197 of the Code of Criminal Procedure, 1973.
14. Section 101 which deals with return of unutilised land is being amended to increase the period after which unutilised land will be reverted back to land owner or to Land Bank from “five years” at present to “a period specified for setting up of any project or for five years whichever is later”.
15. In section 113 of the Fair Compensation in Land Acquisition Act, the word “Part” has been inadvertently used instead of the word “Act” which needs to be rectified. Further, the period provided for removal of difficulties is being extended to five years.
16. The Bill proposes to replace the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (4 of 2015).



Qus Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

CHAPTER 6

LAND ACQUISITION ACT: RIGHT STEP, WRONG ROUTE

After a failed winter session of Parliament, the government recommended promulgating an ordinance for changes to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. According to Finance Minister Arun Jaitley, the government had to amend the Act before the end of the year since Section 105 of the Act, which provides for exempting 13 other central laws, would otherwise have to be notified by December 31.

The 13 pieces of legislation include the Land Acquisition (Mines) Act 1885, Atomic Energy Act, 1962, Railway Act 1989, National Highways Act 1956 and Metro Railways (Construction of Works) Act, 1978. A key change in the ordinance is that the higher compensation and rehabilitation and resettlement package would also apply to the 13 exempted legislations.

According to Finance Minister Mr Jaitley:

With regard to the process of land acquisition, the priority of the government was that the interest of farmer whose land is to be acquired is paramount. Currently, the Act also contains an urgency clause — related to natural disasters and wars — where the acquisition of land is exempted from the stringent requirements in the legislation.

The opposition Congress party has criticized the development and has reached out to all other political parties asking them to come together to block the ‘anti-farmer’ amendments. ***According to Congress party general secretary Mr Digvijay Singh:***

His party would oppose every move to dilute the Land Acquisition Act.

And while politicians quibble, analysts are upbeat about the government’ move.

According to Religare in a report:

The ordinance highlights the government’s intent of bringing in major reforms for the infrastructure/ manufacturing sector. The same would go help the government in executing several of its marquee projects like – 100 smart cities, DFC and DMIC amongst others.

The changes in the ordinance have been made after taking inputs from states suggesting changes to the Act which would make it more industry-friendly. Changes included in the Act include doing away with the consent clause for public private participation (PPP) projects, removing the requirement for mandatory social impact assessment (SIA) study and relaxing the retrospective clause. Experts say that



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

holding a social impact study involving public hearings - procedures that industry executives say would have dragged the acquisition process for years.

One of the key reasons for low rate of investments was the Land Acquisition Act which was introduced by the previous government in January 2014 which not only made the process of acquiring land costly but also tedious. The ordinance will act in ironing out procedural difficulties in land acquisition needed for defence and infrastructural projects.

Goldman Sachs sees this development as positive for India's infrastructure overall as key projects related to rural infra, electrification, industrial corridors and PPP projects being exempted will result in faster land acquisition and help move along projects that have been stuck for want of land.

The ordinance, however, is unlikely to solve the problems of the manufacturing sector. According to Goldman Sachs, the ordinance will only bring in partial relief as manufacturing sector/industry will still have to go through the process of SIA and obtain mandatory consent and administrative burden related to rehabilitation and resettlement which would continue to impact both infrastructure and industrial projects. Furthermore, the ordinance now includes the earlier exempted 13 acts.

Higher cost of land acquisition is not so much of a negative as long as land acquisition becomes swifter says the Goldman Sachs report. Direct cost related to land acquisition will rise as a result; however, faster land acquisition would result in indirect cost savings for infrastructure projects.

Though the intentions of the government are right the mode selected to implement them are questionable. Unable to solve the parliament logjam adopting the ordinance route is not a healthy sign for the democracy.

According to HSBC Securities:

While ordinances can be reissued once they lapse, they may not be perceived as a stable solution by investors wanting secure property rights. It was the stability in policies through a new government which attracted global investors to India in the first place.



Qusingh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

CHAPTER 7

REFORMATION POLICY OR PLOY: THE INDIAN GOVERNMENT'S NEW LAND ACQUISITION ORDINANCE

Ordinance appears to be the watchword for the incumbent government as of late, with the most recent one inciting fervent debate over an extremely fragile issue. The recent ordinance passed by the government on the 29th of December, 2014 to ease and amend certain provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has resulted in heated discussions all over the country and so there is a need to understand the issue at hand and to critically analyse its pros and cons.¹

History of the Land Acquisition Act

In India, the Land Acquisition Act had been prevalent from 1894 till it was repealed by the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act in 2013. The provisions as per the Act of 2013 included the required projects coming under the purview of Public Private Partnership to attain the consent of 70% of the land-owners whose land was being acquired, a social impact assessment to be conducted for every land acquisition and a retrospective clause wherein the proceedings of land acquisition would expire if either there was no physical possession of the said land or if compensation was not paid within a time period of 5 years and the land would have to be returned.²

The rigorous procedural framework of the Act led to the industrialists demanding for its reformation which included the need to remove the consent clause, regulate the requirement of social impact assessments to large projects, a reorientation of the compensation clause and to expunge the clause for the return of unutilised land to the owners. The fundamental objective of the ordinance passed was to reform these certain provisions in the Act that were proving to be bottlenecks in the economy's endeavour to maximize growth keeping in mind the welfare of the citizens being affected.

1. Sarah Mary Stanley, *Reformation Policy Or Ploy: The Indian Government's New Land Acquisition Ordinance, 2014*

2. http://en.wikipedia.org/wiki/Land_Acquisition_Act_1894

Key Features of the Land Acquisition Ordinance

A quick glance through the provisions of the Act might elicit a negative reaction that the process sounds cumbersome and dragged out. In the ordinance issued by the government these provisions are done away with especially in the case of projects related to the infrastructure or social infrastructure sector, affordable housing, national security and industrial corridors as well as those coming under PPP wherein the acquired land would remain in the ownership of the government. The retrospective clause was also changed wherein acquired land need only be returned to owners if it remained unused for a period of ten years. As a bonus and with an aim to balance the scales, the government stated that the rehabilitation

and resettlement clause would now also be applicable to the previously exempted 13 legislations which included the Special Economic Zone Act, 2005, the Atomic Energy Act, 1962, and such.

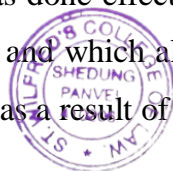
Evaluation of the Ordinance

An initial evaluation may consider this as a supposed win-win situation, wherein essential developmental projects have more leeway for moving forward and the land-owners receive a guarantee for compensation, resettlement and rehabilitation in previously exempted cases. However, a thorough perusal reveals the need to discuss the provisions of the Act, its administration and the true nature of the bottlenecks that are constricting growth.

On examination, the removal of the Social Impact Assessment does away with accountability to a large extent. Without such an assessment, there is no proper manner of finding out the actual number of citizens that get affected by such degree of land acquisition which include not just the land-owners. Without the said assessment only the land-owners receive recompense, when earlier, compensation would also have been received by those dependent on the land for their livelihood. Due to the high population density of the country there is a high dependency on land and other natural resources, therefore such an act would affect the lives and livelihoods of not just the owners. The Social Impact Assessment to a great extent was prosaic and time consuming because of its requirement for all projects irrespective of size and due to a lack of structure of methodology for evaluation by the constituted expert committee. However, the accountability that it provided was undeniable as it helped to exactly estimate the cost of compensation, resettlement and rehabilitation that have to provided (as it also allowed for the estimation of indirect dependents on land) and if administered effectively could have even helped to reduce grievance litigation.

The alteration to the Act for elimination of the consent clause with respect to certain areas is as of now only an agreement from the side of the Centre. There is no certainty that the mandate will be exercised and further mandates will not be put into place by the States, whose support is crucial in projects as the state level authorities are finally responsible for the possession of land. Also, the consent clause has only been eliminated for PPP projects thus leaving private players still in a quagmire over the procedure wherein they require 80% of consent for their projects. This brings into play a level of disparate treatment of public projects and private funded projects, wherein through the normal route private players will still be plagued by delays whereas the less regulatory route requires a partnership with the government.

A McKinsey Study in 2009 on “Building India Accelerating Infrastructure Projects”³ stated that one of the major bottlenecks in acquisition of land for continuation of projects was the under-valuation of the price of land being acquired, which the ordinance does not address as the compensation clause has been left as it is. Land acquisitions would become an easier process if the valuation of land, for the purpose of providing compensation, was done effectively and not based on registered value that is more often than not an under-valued price and which also does not take into account the value that will be lost to the owners due to appreciation as a result of construction of infrastructure.



Principal
ST. XAVIER'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

A Goldman Sachs report states that an increment in the cost of purchasing land (a direct cost) would not prove harmful in the long run as prompt appropriation of property will amount to lesser indirect costs. The dispute resolution mechanism that is made use of in India is another obstacle in itself especially due to its lack of exaction. It further adds to project delays due to lengthy litigation periods. All of this results in an increment in the cost of project, with regard to just the acquisition of land, which is injurious to private investment in the long run.

A survey of media reports and court cases by Rights and Resources Initiative shows that there have been 252 conflicts in just 165 districts of the country over the acquisition of

3. *Building India: Accelerating Infrastructure Projects*, 2009. McKinsey

land (inclusive of private land, diversion of forest land, transfer of common land). In India, approvals for projects are given with only 15 to 20% of the required land being acquired and land conflicts due to the above reasons would only further stall construction and development as well as the flow of investment.

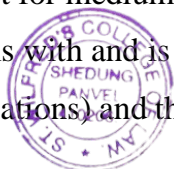
A factor that is also not considered to a great extent is that the burden of poorly gauged projects falls on the shoulders of the public sector banks that have to take over the non-performing assets.

The analysis of the factors as mentioned above brings us to the conclusion that the acquisition of land may not pose as much of a problem as the framework that is in place for the process of acquisition and the efficiency and effectiveness of its administration. The ordinance route that has been adopted by the government most certainly does not inspire confidence in its ability to move reforms in the legislative section of the government and also the stability of its proposed policy changes.

The examination of the proposed modifications to the Act of 2013 indicates that the ordinance, in effect, fails to address the confirmed quandaries that plague the land acquisition issue in the country and it makes us question the true purpose of this initiative as to whether it actually serves to protect the interests of the citizens and the growth of the country or whether it only serves to elevate the political agenda of the government during a time of low faith and is in fact a ploy to control market players and market acquisitions and strengthen the power of the Government entity at the Centre rather than correct market failures.

Suggestions

In retrospect, appropriate solutions can be identified for all the issues; however the fundamental correction to be made is to provide a definitive right to the people over their land and resources, which would provide them with the certainty and stability of ownership to conduct negotiations and enable them to advocate their needs and participate in the developmental process. Social Impact Assessments should also be reinstated at least for medium to large scale projects, where the assessment is done by an expert group that currently deals with and is familiar with the situations of the area under consideration (possibly with no political affiliations) and the final approval has to be provided by them in consultation



Principal
St. Xavier's College
Shedung-Panvel 410206

with the local self-government and not by the state. An avenue must be provided for private players to forge deals themselves with the owners without additional cumbersome regulatory requirements. The deals made could include an agreed upon modest compensatory package over and above which the private players could offer the owners continued payment of a percentage of profits for a certain period (a steady income flow) as an incentive. Another solution could be to let the owners maintain their rights over the property (therefore they will receive aid only for resettlement and rehabilitation) till after the completion of the projects, based on which they can then sell their property to take benefit of the appreciated land value, thus providing them with added incentive to give consent for the sale of their land.

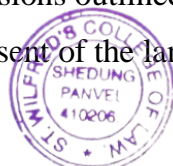
CHAPTER 8

AMENDMENTS TO THE LAND ACQUISITION LAW – THE REAL PICTURE

On December 31, 2014, the Government promulgated the ordinance to amend some provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation (Amendment) Act, 2013. What was the need to amend the 2013 law and what is the effect of these amendments?¹

It has been repeatedly mentioned that the Land Acquisition Act, 1894 had become obsolete and needed amendment. It indeed had. The compensation provisions in the 1894 Act were highly inadequate and, therefore, it was desirable that higher compensation coupled with a rehabilitation and resettlement package be provided. The 2013 Act did that. I support the 2013 Act on that ground. However, thirteen Acts of Parliament, which provided for land acquisition, were put in the Fourth Schedule of the Act. Section 105 of the 2013 Act made the provisions of the Act inapplicable to these exempted Acts. The said Section provided that the Government could issue a notification and direct 'any' provision of the Act relating to compensation or R&R would be made applicable to the exempted acts. The "Proposed" notification had to be placed before Parliament for a period of 30 days and Parliament was expected to approve, disapprove or modify the said proposed notification. The need for an ordinance arose because such a notification would have to be put before Parliament in the Budget session itself in July-August, 2014 and the approval or disapproval taken accordingly. 31st December, 2014 being the last day for such a notification, the Government decided to amend the Section 105 and apply all the compensation and R&R provisions of the 2013 Act to the thirteen exempted laws. Through this provision the present ordinance provides that the farmers' would get higher compensation if land is acquired under any of the exempted laws. It goes a step further than the 2013 Act itself. This also explains the urgency of issuing the ordinance on the last day of the year since otherwise the Government would have been in default of the complicated approval provisions outlined in the 2013 Act.

The 2013 Act provided for consent of the land owner in varying percentages in a number of cases.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

1. Union Cabinet Approves Amendment to Land Acquisition Act. (2014, 12 29). The Indian Express.

It is only when the land owner's give consent that their land be acquired and the Government can initiate the acquisition process. Thereafter, the Act provided for a detailed social impact study. It further provided for special provisions with regard to food security.

Historically the power to acquire the land is a sovereign power. The State needs land for any form of development. Land is required for housing, townships, urbanization, sub-urbanisation, industrialization, infrastructure, both urban and rural, irrigation and defence of India. This list would be endless. A larger public interest always prevails over private interest. However, the land owner who loses the land has to be more than adequately compensated. A highly complicated process of acquisition which renders it difficult or almost impossible to acquire land can hurt India's development. When the 1894 law is amended in the 21st century, it must provide for a 21st century compensation and cater to the developmental needs of the 21st century. It cannot completely ignore the developmental needs of the society and mandate that India does not grow.

The present amendment carves out five exceptions for which this complicated process of acquisition will not apply. However, the compensation provisions remain untouched. The five exempted purposes are discussed herein below:

- The defence and security of India has been made an exempted purpose. The 2013 Act completely ignored it.
- Rural infrastructure, including electrification, is an exempted purpose. Roads, highways, flyover, electrification and irrigation will all add to the value of the farmer's lands. This exemption is entirely in the interest of rural India.
- Affordable housing and housing for poor is an exempted purpose. Migration from rural areas to urban and sub-urban centers where employment opportunities are available, is a reality. It is the migrants from rural areas who would benefit from this exception.
- Industrial corridors which run for a narrow distance alongwith various highways, give a fillip to the entire development of those rural areas. A Delhi-Mumbai industrial corridor would benefit thousand of villages while running alongwith national highway. There could not be a greater opportunity for the rural areas than an industrial corridor running close to agricultural lands. This would generate employment opportunities and enhance the value of the land itself.
- Infrastructure and social infrastructure projects, including those under public private partnership, where ownership of the land vests with the Governments. This is bound to benefit the entire country, particularly the people in rural areas where infrastructure and social infrastructure is inadequate.



Qu Singh
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

Almost all the exempted purposes benefit rural India. They would enhance the value of land, create employment and provide rural areas with better infrastructure and social infrastructure. This is in addition to the enhanced compensation and R&R provisions being expanded to the thirteen exempted acts.

The amendment, therefore, balances the developmental needs of India, particularly rural India, while still providing enhanced compensation to the land owners. Will the State Governments ruled by political parties, which are opposed to this ordinance, publically declare that they will not use the law which provides for enhanced compensation in the case of exempted acts and acquisition process which balances the developmental needs of society, particularly those of poor, weaker sections, rural India alongwith defence requirements of the country?

This 2013 Act had over 50 drafting errors. The provision with regard to the rectification of errors will be used to cure most of them. Some are being cured through this ordinance which alters the earlier mandate of the 2013 law that unused land has to be returned five years after the acquisition. The earlier provision was clearly defective. Creation of smart cities, townships, industrial corridors, business centers, defence projects, cantonments, ports, nuclear installations, building of highways, irrigation projects, dams have a long gestations period. They cannot be completed in five years. If the earlier provision is to be effected, we would be a nation of incomplete projects on account of defective legislative drafting.

The draft provisions of the 2013 Act enthusiastically provide that no part of an acquired land could be used for a private educational institution or a hospital. How will new smart cities and townships come up? Will they only have a civil hospital and a Government school/ college and no other healthcare and educational institutions will be allowed to be established there? The ordinance permits hospitals and educational institutions to be established on an acquired land. That is the purpose of acquisition for townships. A township without a social infrastructure would be inherently incomplete.

The needs of a modern growing and developing India need a balanced approach. Development and justice to the land owner must coexist. One cannot be done at the cost of the other. The amendment ordinance is based on extensive consultations where State Government of most political parties supported these changes. Those who are opposed to it can certainly mandate their party's State Governments not to use the provisions of the ordinance. History will judge how these States will lose out in the era of competitive federalism.



Qusingh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

CHAPTER 9

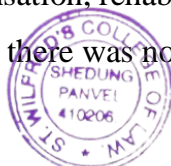
CONTROVERSY OVER LAND ACQUISITION BILL

As the Lok Sabha takes the controversial Land Acquisition Bill for a debate on Monday, the NDA managers are keeping their fingers crossed with the entire opposition and some of its allies raising strong objections to the new amendments saying the new bill is against the interest of farmers. Though the bill may get passed in the lower house, the government will find it difficult to sail through the tough test in Rajya Sabha where the NDA is a minority. The bill has become an apple of discord at a time when Prime Minister Narendra Modi and his team are pitching hard for a platform for growth based on industrialization.

What the controversy about

Until 2013, the land acquisition in India was governed by The Land Acquisition Act 1984. In 2013, the UPA government passed the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act to repeal the 19th century act. The UPA Act was aimed at ensuring the land is acquired strictly for public welfare projects and land owners are adequately compensated and rehabilitated. The protests and outrage began after the Modi government decided to brought in following amendments to the RFCTLARR Act .

- Removal of ‘consent’ clause: As per the UPA law, land could be acquired only with approval of 70% of land owners for PPP projects and 80% for private entities. However, the amendment, brought in by the NDA removed this provision of ‘consent’ for acquiring lands for five purposes – Industrial corridors, Public Private Partnership projects, Rural Infrastructure, Affordable housing and Defence. This has drawn much of the criticism not only from political circle but also from activists like Anna Hazare who has launched a mass protest against the bill.
- Return of unutilized land: According to the Act 2013, if the land remains unutilised for five years, then it needs to be returned to the owner. But according to the ordinance promulgated by the NDA government, the period after which unutilised land needs to be returned will be five years, or any period specified at the time of setting up the project.
- According to the 2013 Act, land can be acquired by any private company. But according the recent ordinance, land can be acquired by any private entity.
- As per the new law, if any government official commits an offence during the process of acquisition, he/she cannot be prosecuted without prior sanction from the government.
- The amendments propose to include 13 legislations that are currently exempted under the purview of the Act in the compensation, rehabilitation and resettlement provisions. This is, however, seen as a pro-farmer move as there was no uniform central policy of rehabilitation and resettlement.



ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Why NDA brought the amendments?

Ever since this government came to power, Prime Minister Narendra Modi has been vigorously campaigning for the 'Make in India' vision which aims to boost the domestic manufacturing. Though Modi is wooing the foreign companies to invest in India, land acquisition is a major problem for these firms with many of them dropping their investment plan over the past few years.

Though there are suggestions from some corners that the industrial enterprises should purchase land directly from farmers, it doesn't seem feasible in India as the records of land holding cannot be easily verified in the country. This may open the possibility of disputes after the purchase. However, the government mediation in the transfer of land has not proved fully successful to compensate and rehabilitate the displaced people. The draft of the government's National Policy for Rehabilitation states that a figure around 75% of the displaced people since 1951 are still awaiting rehabilitation.

According to Finance Minister Arun Jaitley, the ordinances were aimed at speeding up development in five areas: development of industrial corridors, social infrastructure such as education, rural infrastructure such as roads and power, housing for the poor, and the country's defense capabilities. The ordinance makes land acquisition easier in these areas by exempting them from several provisions of current law.¹

1. <http://blogs.wsj.com/indiarealtime/2012/09/27/>

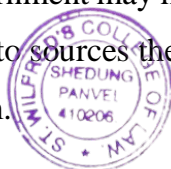
Politics over the bill

The Congress-led opposition parties are training their guns to corner the government when the bill comes for consideration in the parliament. Creating more trouble to the government, some of the NDA allies have also come against the bill.

Even though Parliamentary affairs minister Venkaiha Naidu expressed hope to garner the support of Shiv Sena, Akali Dal, Lok Jansakthi Party in the house, the Maharashtra ally has made it clear that it will strongly oppose the bill. The BJD has come up with a suggestion that it would support the bill if land owners whose land was sought to be acquired for commercial enterprises, public as well as private, were given a share in the profit.

Sensing the stiff opposition to the bill, government has set a reconciliatory note with Narendra Modi saying it is ready to review any amendments which are deemed as anti-farmer. Asserting that the land bill is not anti-farmer, Modi said, "The law that was passed by earlier government has no provision for allotment of land for schools, hospitals, houses, water and irrigation. I ask you whether you need all these facilities or not."

Media reports say that the government may make some changes in the amendments to get the opposition members on board. According to sources the government may bring back the 'consent clause', although most probably in a diluted form.



Principal
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Future of the bill

If the government cannot get the bill passed in Rajya Sabha, it may call a joint session of the parliament. However, with its own allies opposing the bill, it will be tough for the government to get it passed in the joint session also. Though the NDA has 395 members out of the total 788 in both the houses, BJP alone has only 327 MPs, making the fate of the bill hang in balance.

Disclaimer: We respect your thoughts and views! But we need to be judicious while moderating your comments. All the comments will be moderated by the NIE editorial. Abstain from posting comments that are obscene, defamatory or inflammatory, and do not indulge in personal attacks. Try to avoid outside hyperlinks inside the comment. Help us delete comments that do not follow these guidelines.

Build United Struggles against Pro-Corporate and Anti-People: Land Acquisition Ordinance

The Modi Government in an authoritarian manner has amended the Land Acquisition legislation through an Ordinance without going through the Parliament. The CPI(M) had criticised the Act brought by the UPA Government as being inadequate and had moved amendments to it. The CPI(M) wanted the Act to be further strengthened to protect the interests of farmers and those dependent on the land.

However the Modi Ordinance snatches away even those protections. It is a step backwards to reinstate the anti-farmer framework of the colonial Land Acquisition Act of 1894. The Ordinance ignores genuine concerns of farmers and millions of persons dependent on land.

The Issue of Consent

The 2013 Act provided that acquisition of land for private companies required consent of at least 80 per cent of those affected families and in the case of public private partnership projects of at least 70 per cent. (*Sec 2.sub clause 2 (b) (1) and (2)*)

The Ordinance excludes a range of more projects whether in the public or private sector from the condition of getting consent from the farmers. Projects to be excluded include all those relating to defence production, power projects and other projects for rural infrastructure, housing for poor, industrial corridors and PPP projects. Since most of land acquisition has been for such power and irrigation related projects, the exemption given from getting the consent of farmers will be disastrous for the farmers. (*Insertion of new Ch 3A*)

Thus the Ordinance reinstates the “Eminent domain” or power of the State to forcibly acquire Land without the owner's consent by the different exemptions given in the Ordinance. The amendments will remove distinction between acquisition for the State and for Private companies. It will bring private companies and their activities of unbridled profiteering into public purpose.

In a sense therefore these amendments are even more retrograde than the 1894 Act. Even though the 1894 Act allowed the use of the State's eminent domain to forcibly acquire land for public purpose, acquisition could not be done for “private purposes” of a company simpliciter, and had to be made in the



PRINCIPAL
ST. IGNACE'S COLLEGE
SHEDUNG-PANVEL 410206

“larger public interest”. Further, acquisition for companies was not to be done without due consideration, simply on demand. But now all that is done away with. The ordinance shows that Modi Raj is Company Raj.

The Issue of Social Impact Assessment and Safeguard for Food Security

The 2013 Act has two important chapters 2 and 3. Chapter 2 deals with Social Impact Studies and Assessments. This is to have an impartial assessment as to how many families will be affected, is the land being acquired the minimum of what is actually required, whether any alternative site is available and so on. Corporates had strongly opposed this Chapter as often they have acquired land far in excess of the actual requirement, fudged figures of those affected and so on.

The Ordinance exempts all categories included in its new proposed Ch 3 A described above entirely from having any Social Impact Assessment.

Similarly there is wholesale exemption from Chapter 3. Chapter 3 deals with ‘special provisions to safeguard food security. It categorically states “no irrigated multi cropped land shall be acquired under this Act.” However it does give certain exemptions for “exceptional circumstances” and as a “demonstrable last resort.” But the Modi Government is unambiguous about its drive for allowing private projects in the name of infrastructure. Thus the entire chapter is nullified by exemptions given to the five categories listed above.

These three aspects namely the dilution of consent of farmers, exemption of any Social Impact Assessments and freedom to acquire even the most productive agricultural land are the actual core of the Ordinance. They are deeply anti-farmer and pro-corporate and must be opposed.

The Issue of Government Acquisition for Private Sector

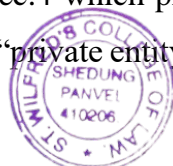
The Act had excluded Government acquisition for private hospitals, private educational institutions and private hotels. (*Sec 2.1 Clause b.(i)*) The Ordinance however permits Government acquisition of land for private hospitals, hotels and educational institutions. Thus the very definition of “public purpose” gets converted to public purpose for private profit.

Public purpose must be defined as activities which are of direct benefit to the largest number of people and does not include the furtherance of private speculation and profit.

The provision to include private hospitals and private educational institutions under social infrastructure category thus to enable cheap and forcible acquisitions of land cannot be accepted.

New Addition of Private Entity

The Act has a chapter under Sec.4 which provides definitions. An addition has been made to this list with the inclusion of the words “private entity” which includes corporates proprietorships and even non-



Principals
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

profit organisations or any other entity under any law. Thus NGOs close to the sangh parivar or anyone else can be included in the law.

This amendment widens the scope of those who can grab land.

The issue of Unutilised Land

Under the Land Acquisition Act, 2013 if land acquired remained unutilised for 5 years, it was to be returned to the original owners or the land bank.

According to the Land Acquisition Ordinance, 2014 the period after which unutilised land will need to be returned will be 5 years, or any period specified at the time of setting up the project, whichever is later.

This Amendment will ensure holding of land for a prolonged period even if unutilised and encourage speculative activity. Even today land taken for projects remains unutilised for years together while the former owners suffer, no public purpose is served.

This is entirely unacceptable.

The Issue of Retrospective Effect

The Land Acquisition Act, 2013 states that the Land Acquisition Act, 1894 will apply in those cases, where an award has been made under the 1894 Act.

However, if such an award was made five years or more before the enactment of the 2013 Act, and the physical possession of land has not been taken or compensation has not been paid, the 2013 Act will apply.

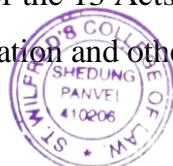
The Land Acquisition Ordinance, 2014 states that in calculating this time period, any period during which the proceedings of acquisition were held up:

- (vi) due to a stay order of a court, or
- (vii) a period specified in the award of a Tribunal for taking possession, or
- (viii) any period where possession has been taken but the compensation is lying deposited in a court or any account, will not be counted.

Thus Ordinance discounts farmer protests and in effect saves the land acquirer from the costs of compensation under this Act. This is clearly unfair and unjust.

Issue of Extension of Compensation

The Land Acquisition Act, 2013 exempted 13 Acts from its purview with the condition that they would be included under the purview of the Act within one year. This means that all land losers whose land was to be acquired under any of the 13 Acts such as the Coal Bearing Areas Act etc. would be eligible for the benefits of the compensation and other benefits of resettlement and rehabilitation under the Act.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

This had to be done within a year. At that time the CPI(M) had demanded that there was no logic in waiting for a year and that all benefits under the new law should also accrue to those whose land was acquired under the 13 exempted Acts. This was not accepted by the then UPA Government.

The year was completed in January 2015. The Modi Government should have brought a simple amendment in the December session of Parliament for the inclusion of similar rates of compensation. Instead of which it used the occasion to bring not only this clause in the Ordinance but to dilute and eliminate other rights.

Fight the Ordinance

As can be seen this Ordinance paves way for forcible and indiscriminate land acquisition by doing away with the need for consent of the land owners and Social Impact Assessment. The definition of public purpose is further diluted and will bring Private companies and their activities of unbridled profiteering into public purpose and promote further unregulated takeover of land by corporates. Food security will be compromised as it will now be possible to easily acquire multi-cropped fertile land as well as productive rain-fed and semi-arid land for industrial corridors, infrastructure projects including the PPP projects. The provision to substitute “private company” with “private entity” is a blatant attempt to widen the scope of land grabbing. The provision to include private hospitals and private educational institutions under social infrastructure category thus to enable cheap and forcible acquisitions of land cannot be accepted.

The Ordinance is merely an instrument for speedy expropriation and facilitation of land acquisition in a quick, cheap and easy way with little concern for consent, adequate compensation and rehabilitation of landowners and other dependents on land.

As per CPI(M) it shall build broad united movements at all sites of indiscriminate, unjust land acquisition and fight to protect the rights of the peasantry, tenants, agricultural workers, Adivasis, Dalits and all affected persons.

Understanding the Land Acquisition Bill: Politics, changes and impact

It is hard to believe before the UPA Government brought the amendments to the Land Acquisition Law in 2013 that we were following the so-called The Land Acquisition Act, 1894, a 120-year-old legislation. The 1894 Land Act begins with “Whenever it appears to the Government the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette...”

My sincere thanks goes to the UPA Government led by the Congress, which brought in these changes with equal credit to the opposition, mainly the Bhartiya Janata Party for getting rid of that draconian law.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014, signed by the President of India on the last day of 2014 is the doing of



PRINCIPAL
SHREDUNG-PANVEL 410206

the present National Democratic Alliance (NDA) government, and it lists the amendments to the Act passed by the United Progressive Alliance (UPA) government in 2013: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The Narendra Modi Government has brought out some key changes in the LAB, which in their opinion were fundamental to the overall growth and development of the country as a whole, keeping in mind the benefit of villagers, farmers and more importantly farm labourers. Many political parties have come together, particularly for political reasons to corner the NDA Government and are agitating against it, calling the Bill and the Government, anti-farmer.

Our beloved modern Gandhi, the serial agitator Anna Hazare also doesn't like the changes that have been made to the UPA Act. Before we delve into why this is so, it is important to first list precisely what the reservations are and more importantly, what the changes are and how it is going to impact farmers or villagers.

Main Acquisitions

Serial social activist. **Anna Hazare** started his agitation against the changes brought to the LAB through ordinance by the NDA Government at the Jantar-Mantar in New Delhi. Sitting on a day-long fast Anna Said "PM Modi promised good days ahead, that is why people voted him. But it did not happen. Good days are only for capitalists."

The main points of opposition by Anna and other political parties include:

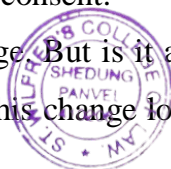
- Land Acquisition Bill is undemocratic and anti-farmer.
- How can Government cheat farmers to pass benefits to businessmen and industrialists?
- This Government is planning to snatch land in the same fashion as the British.
- What was the need for an Ordinance when the Bill was already passed in 2013?
- Very few farmers have knowledge about the bill, they need to be educated.

Key Changes and their Impact

1. Consent Clause: The first proviso of sub-section (2) of section 2 in the UPA version of the Act has a requirement of the prior consent of at least 80 per cent of those affected families before acquiring land. For public-private-partnership projects (PPP), prior consent has to be of at least 70% of those affected families.

Change: The NDA amendment proposes that for projects relating to (i) National security or defense, (ii) Rural infrastructure including electrification; (iii) Affordable housing for poor people; (iv) Industrial corridors; and (v) Social infrastructure and PPP projects where government holds the land, there is no longer any need to obtain prior consent.

Defence: This is a major change. But is it anti-farmer? Is National security not of prime importance? The Government has brought this change looking at the national security aspect. The country needs to



Qu Singh
PRINCIPAL

ST. XAVIER'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

be independent in this matter. Today millions of our heard earned money from the public exchequer goes to other countries in importing the latest arms and ammunition. Should Government inform citizens and take their consent if it plans to put a strategic nuclear plant in some area? No. I also believe that if our farmers come to know that their land is being used for defence purposes, they would only feel proud.

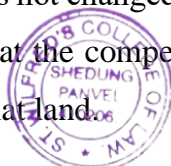
Rural infrastructure including electrification and housing for poor: Infrastructure and social infrastructure projects, including those under public private partnership where ownership of the land vests with the Governments. This is bound to benefit the entire country, particularly the people in rural areas where infrastructure and social infrastructure is inadequate. The Narendra Modi Government came to power on its promise to people to provide irrigation facility to each agricultural land, a house to each family with drinking water facility and 24 hours electricity, and good roads to provide better connectivity. Does this change in law which will help Government execute these projects and fulfil promises made to our villagers is anti-farmer? Don't our villagers deserve a better life?

Industrial corridors and PPP Projects: There are confusions created among people for political reasons. People should know that the Industrial Corridors are not created by capitalists and businessmen. They participate once the corridors are designed. Government will create the industrial corridors and before taking the land, the district magistrate will have to confirm in writing who in the family is going to get a job of what scale before any acquisition takes place.

Almost all the exempted purposes benefit rural India. They would enhance the value of land, create employment and provide rural areas with better infrastructure and social infrastructure in addition to the enhanced compensation. PM Modi on 'Man ki Baat' also clarified that the Government understands that, for these projects, Government shall first utilize the land owned by them, then the barren land and if at all required, agricultural land would be acquired.

2. The Compensation Clause: Thirteen Acts of Parliament like the Railways Act, the Electricity Act, the Atomic Energy Act, etc (see page 45 of the UPA's legislation of this selfsame Act), which provided for land acquisition, were put in the Fourth Schedule of the Act, (these schedules are listed in the UPA Act page 37 onwards) also apply to the orders stated in the fourth schedule "with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act". Which means, with a notification, land acquired for the above 13 Acts, the new increased compensation clause will not apply. This was a blunder.

Change: The NDA amendment has removed the aforementioned provision (underlined). To a layman, it might appear as nothing significant. However, reading the fine details of this provision, it is clear that it ensures that even if the land is acquired under the above 13 crucial Acts, the farmers will get the new, increased compensation—hold your breath—at **four times** the market rate. Is this anti-farmer? The Modi-led NDA Government has not changed the increased compensation provided in the UPA's version of the Act and also clarified that the compensation will be applicable to not only the land owners but also the people dependent on that land.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

On top of that the law modified by the Modi Government ensures that unless full compensation is not paid, land cannot be taken in possession. Compensation will be deposited in a designated bank account and the transactions are totally transparent.

3. Time Limit Clause: Section 101 of the UPA Act states that if the acquired land remains unutilized for a period of five years from the date of taking over the possession, the land shall be returned to the owners.

Change: The NDA amendment has changed it from “five years” with “a period specified for setting up of any project or for five years” and period wasted in legal matters is not included in this timeframe. By doing this the Government fixes responsibility on its own that it has to finish the project within the time limit specified for the project. If Government does not finish the project within the time line, then whatever the original land owners wishes, would prevail.

4. Why did the NDA support the bill in 2013?

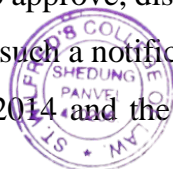
Those who are agitating today for the cause of the villagers and farmers, ruled the country for 60 years under the same law made some 120 years back. The draconian Land Act of 1894 was expunged neither during the socialist governments of Jawaharlal Nehru or Indira Gandhi or the Janata Party, nor during the period the communists held great sway over India’s politics and policies all the way up to the mid-1990s. All these grand protectors of our land were following the extortionate, 120-year-old British-made decrees like “*Whenever it appears to the Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit...*”.

The UPA Government brought in this Act in a hurry to gain the political mileage when it realized that it was facing an inevitable defeat in the ensuing Lok Sabha Election. The BJP, for obvious reasons supported the Act without reading the fine print. However, our thanks are due to both parties for getting rid of the 1894 Act.

When the Modi-led NDA Government was formed at the Centre, State Governments started writing to the central Government that the Act has limitations and requires changes. An year passed by and no state Government was ready to bring the Act to force. Back then, two Congress-governed states—Maharashtra and Haryana applied the new Act but both these “farmer-friendly” Governments, through notification, reduced the compensation to 50 per cent. It is evident that the Modi Government believes in strengthening the federal structure and giving more power to states and therefore, the changes are as per their recommendations now.

5. Why Ordinance?

Under Sec 105, the “Proposed” notification had to be placed before Parliament for a period of 30 days and Parliament was expected to approve, disapprove or modify the said proposed notification. The need for an ordinance arose because such a notification would have to be put before Parliament in the Budget session itself in July-August, 2014 and the approval or disapproval taken accordingly. 31 December



Principals
 PRINCIPAL
 ST. MARY'S COLLEGE OF WOMEN
 SHEDUNG-PANVEL 410206

2014 being the last day for such a notification, the Government decided to amend Section 105 and apply all the compensation and R&R provisions of the 2013 Act to the thirteen exempted laws. Through this provision, the present ordinance provides that the farmers would get higher compensation if their land is acquired under any of the exempted laws. It goes a step further than the 2013 Act. This also explains the urgency of issuing the ordinance on the last day of the year since otherwise the Government would have been in default of the complicated approval provisions outlined in the 2013 Act.

The Real Cause

The ragtag Opposition and other fringe agitators are creating confusion for political reasons. LAB is a major law that is going to change the outlook and the future of India. To help their cause, the Opposition is shifting the narrative of a national requirement to mean it to be a personal requirement. Owning a small piece of land is also a matter of pride for an individual but it is not above national pride and above all, these are narratives which are used to confuse people. Migration from rural areas to urban and suburban centers where employment opportunities are available, is a reality. It is the migrants from rural areas who would benefit from this, who travel thousands of kilometres to Metro cities in search of a job and live miserable lives in slums.

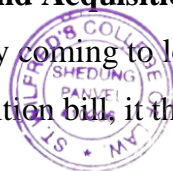
In the end, the most fundamental question arises: What do we want for our own fellow Indians? That our farmers' children are compelled to live their lives in the slums of Delhi, Mumbai etc in search of a job that provides them two meals a day? It is important that villages, farmers and their whereabouts are strengthened by providing them better roads, electricity, irrigation water, and industries around them for the additional burden on farms to shift to industrial employment. Better market, better school, better healthcare...indeed, the very *basic* needs that should be met, is the need of the hour for our villagers.

To know what our villagers, farmers, farm workers actually want and expect from the Government, watch this—a riveting, magnetic, and enthralling speech that shakes you to the core by none other than a backward farmer and also a Member of Parliament from Bihar, Hukumdev Narayan Yadav. This is one of the greatest speeches ever made in the Parliament since the Constituent Assembly Debates.

He needs of a modern, growing and developing India needs a balanced approach. Development and justice to the landowner must coexist. One can't be done at the cost of the other. The amendments brought in by the Modi Government are based on extensive consultations where State Governments of most political parties supported these changes. Those who are opposed to these changes can certainly mandate their respective party's State Governments not to use the provisions of the ordinance. History will judge how these States will lose out in the era of competitive federalism.

The Contention about the Land Acquisition Amendments?

With the Bharatiya Janata Party coming to loggerheads with political parties in the Rajya Sabha on the amendments to the land acquisition bill, it threatens to throw the Parliament into disarray. Anna Hazare



Qus Singh
PRINCIPAL

ST. XAVIER'S COLLEGE OF LAW
SHEDONG-PANVEL 410206

has already started a huge protest on the issue, and he is joined by several political parties including Aam Aadmi Party, Trinamool Congress, the Left, etc.²

Here's a short history of the land acquisition bill and what's happening right now.

What Is The Land Acquisition Bill?

The Land Acquisition Act was passed in 1894, and allows the government to acquire private land for public purposes, which could be for large-scale development like building roads, industries, mining, public private partnership (PPP) projects, etc.

The Parliament in 2013 passed The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act to repeal the nineteenth century act. This was to ensure that land was acquired for strictly public welfare projects and land owners were adequately compensated, which would include monetary relief as well as proper rehabilitation.

At the time, the Congress-led UPA government had passed the new act after all-party consultations. The BJP had supported the Bill.

The BJP government has now introduced amendments to this act, which have been opposed by all political parties, including their ally Shiv Sena in the Rajya Sabha. The BJP's argument has been that the UPA's land acquisition law makes it impractical to acquire land for any public purpose and endlessly delays infrastructure projects.

While the amendments were passed in the lower house of the Parliament where BJP enjoys a vast majority, it has been unable to pass this in the Rajya Sabha. Instead, it took recourse in an ordinance to pass the amendments to the bill in December 2014.

The Political Parties Opposed To The Amendments

The amended act does not require consent from 80 percent of the land owners, if the purpose is for five sectors — national security, defence, rural infrastructure (including electrification), industrial corridors and housing for the poor. Social Impact Assessment (SIA) is also not required for these projects, according to these new amendments.

2. <http://economictimes.indiatimes.com/news/politics-and-nation>

This would mean that only the land owner would be compensated, since the SIA, used to track how many people depend on the land, is now being done away with.

According to the Campaign for Survival and Dignity, a national platform of tribal and forest dwellers' organisations in ten States, the bill has far too many loopholes to swing it in favour of industrialists and private interests.



Rajesh Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Even though 80 percent consent from land owners is required when the project does not fall into the five categories stated earlier, the group claimed that there were two easy ways to circumvent the rule. One was in cases when a private group had acquired part of the land, then the government could acquire the rest of the land and would not require consent from land owners.

Second, government could acquire land for their own purpose, "to hold and control", and then change their mind and hand it over to a private company. According to the organisation, under section 1A(1)(a) of the amended act, what mattered was the intent of the government at the time of acquisition, which could change afterwards.

The members from Congress, Left, Trinamool Congress, SP, BSP and JD-U have all opposed the government over provisions of the land ordinance calling it "anti-farmer" and aimed at "benefitting corporates".

What Does The BJP Have To Say?

BJP has completely denied allegations that the amended act is anti-poor and anti-farmer.

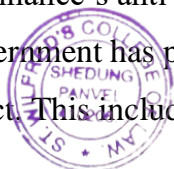
"Opposition parties like Congress, Trinamool, Samajwadi Party and BSP have been carrying out a relentless campaign to create an impression that the ordinance is anti-farmer. We want to make it clear that contrary to their claims, the provisions in the ordinance will provide huge long-term benefits to the farmers of the country," BJP national secretary Siddharth Nath Singh has said.

They have also claimed that it is a "pro-farmer" bill as it has included 13 so far excluded Acts under the Land Acquisition Act, and land acquired from these existing central pieces of legislation will also require the same form of rehabilitation and compensation.

These Acts include the Coal Bearing Areas Acquisition and Development Act 1957, the National Highways Act 1956, Land Acquisition (Mines) Act 1885, Atomic Energy Act 1962, the Indian Tramways Act 1886, the Railways Act 1989, the Ancient Monuments and Archaeological Sites and Remains Act 1958, the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962 and the Damodar Valley Corporation Act 1948, the Electricity Act 2003, Requisitioning and Acquisition of Immovable Property Act 1952, the Resettlement of Displaced Persons (Land Acquisition) Act 1948 and the Metro Railways (Construction of Works) Act 1978

Ordinance for the Land Acquisition Act: Key Developments

- Senior social activist Anna Hazare has launched a protest against the Land Acquisition Bill ordinance, calling it "anti-farmer" legislation.
- 2 day protest to be followed by padyatra of three to four months across the nation for creating awareness about the ordinance's anti-farmer focus
- On 29/12/2014, the government has promulgated the ordinance leading to significant changes in the Land Acquisition Act. This includes removal of consent clause for acquisition of land for:



S. Singh
PRINCIPAL

ST. WALTER'S COLLEGE OF EDUCATION
SHEDUNG-PANVEL 410206

- Industrial corridors, PPP projects, Rural Infrastructure, Affordable housing , Defence
- Protest is being lodged against the nature of amendments to the Land Acquisition, Rehabilitation and Resettlement Act 2013
- Amendment removes provisions for taking the farmer's consent before engaging in land acquisition

Opposition to the Bill

The Land Acquisition Act mandates necessary consent of at least 70% of land owners for acquisition of land for PPP projects and 80% for acquisition of land for private companies; ordinance seeks to remove this for 5 key sectors

Nature of Changes as against previous legislation

- Omission of SIA and consent clause for 5 sectors
- Pro-farmer step with respect to rehabilitation, resettlement and compensation provisions for close to 13 existing pieces of legislation namely:
 - Coal Bearing Areas Acquisition and Development Act 1957,
 - the National Highways Act 1956,
 - Land Acquisition (Mines) Act 1885,
 - Atomic Energy Act 1962,
 - the Indian Tramways Act 1886,
 - the Railways Act 1989,
 - the Ancient Monuments and Archaeological Sites and Remains Act 1958,
 - the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962
 - the Damodar Valley Corporation Act 1948
 - The Electricity Act 2003,
 - Requisitioning and Acquisition of Immovable Property Act 1952,
 - the Resettlement of Displaced Persons (Land Acquisition) Act 1948 and
 - the Metro Railways (Construction of Works) Act 1978
- Compensation for the farmers remains the same; close to 4 times the market price for rural and 2 times for urban land
- Land ordinance bill has been introduced as under Section 105 of the Land Acquisition Act, clarity is required on whether provisions need to be applied for aforesaid 13 legislations.

Reaction to the Changes

- Congress has opposed the ordinance indicating anyone who is pro farmer should be able to raise their voice against this



Qus Singh

PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- Indian Express report says Kerala and Haryana want the removal of the consent clause for PPP and bring it close to 50%
- Assam, Haryana and HP have objected to the definition of the family as being too broad and generic
- Regarding SIA, Karnataka, Kerala, Manipur and Maharashtra have said process should be restricted to the large projects alone

Positive

- As per the ordinance farmers will get 4 times the market price of their land and 20% of the original land following development after ensuring the payment of the development and acquisition cost
- Development of infrastructure in rural areas will help the farmers and their families and improve the quality of life
- Land acquisition is only meant for projects associated with public good and welfare
- Private companies will purchase land as per the price the farmer demands from them; legislation is not anti-farmer
- Ordinance has only removed Social Impact Assessment and 70% consent in the event of PPP projects for the greater good
- State governments have been empowered with the choice of exempting projects from Social Impact Assessment and the consent clause is left with concerned state governments
- Ordinance represents and respects cooperative federalism

Negative

- Land ordinance does not take SIA and consent clause into account
- Land can forcibly be acquired from farmers
- Farmers may suffer the effects of unsustainable development
- Through omission of the social assessment part, government has removed the hurdle of compensating those dependent on the land; new ordinance only ensures land owner alone will be compensated
- Whether land is fertile or not will not be considered if it is acquired for the 5 key sectors; even extremely fertile land will be acquired if it is deemed fit for any of these 5 sectors

Ordinance exempts many projects from checks in 2013 land acquisition law. More projects to comply with fair compensation provisions.



Qus Singh
PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

The *Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (“**2013 Act**”)³, which repealed the archaic *Land Acquisition Act, 1894* (“**1894 Act**”), was passed in pursuit of the objectives clearly spelt out in its title.

3. <http://indiacode.nic.in/acts-in-pdf/302013.pdf>

On December 31, 2014, the Union government promulgated an ordinance, *The Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014* (“**2014 Ordinance**”)⁴ and amended the law on land acquisition again.

Key features of the 2013 Act

The key features of the 2013 Act are highlighted here:

- The process of land acquisition under the Act is transparent and involves a compulsory social impact assessment study and determination of public purpose by the appropriate authorities described under Chapter II of the 2013 Act. The 1894 Act did not contain a transparent process for land acquisition and there was virtually no participation of communities as is the case under the SIA in the 2013 Act. These provisions of the 2013 Act are in line with global standards of land acquisition and good governance.

The State has to issue a preliminary notification that includes the details of the acquisition, a statement on the nature of the public purpose, reasons for displacing the affected persons, a summary of the SIA report, and provisions with respect to rehabilitation and resettlement (Chapter IV of the 2013 Act). The 1894 Act did not contain such refined and comprehensive provisions. It did not define public purpose which the 2013 Act does in Section 2(1). It also did not contain provisions dealing with SIA and rehabilitation and resettlement. The 2013 Act has incorporated these just and indispensable provisions to facilitate democratic and fair transactions.

The quantum of compensation to land owners under the 2013 Act is four times the market value of the land in rural areas and twice the market value in urban areas. In comparison, the compensation under the 1894 Act was at par with the circle rates in the area which were often outdated and did not reflect the true market value of the land.

Acquisition by private companies and public private partnerships require prior consent from eighty and seventy per cent of the affected families respectively. This has to be determined alongside the process of the SIA study. The draconian 1894 Act did not provide such a safeguard and the acquiring authority could forcibly acquire land without prior consent.

4. <http://www.prsindia.org/uploads/media/ordinances/RTFCTLARR Ordinance 2014.pdf>

Even though they are criticised for being time consuming and cumbersome to comply with, these checks went a long way in removing the element of arbitrariness and oppression from the process of land

acquisition. Despite the drawbacks in the 2013 Act, it has been successful in addressing the lacunae of the 1894 Act by enacting provisions dealing with crucial issues of forcible acquisition, inadequate compensation, lack of transparent process, rehabilitation and resettlement, and social impact assessment.

2014 ordinance exempts more projects from the checks introduced in the 2013 law

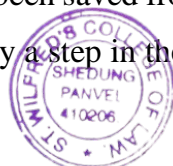
Section 40 of the 2013 Act, that is, the ‘urgency clause’ allowed compulsory acquisition by the government for the defence of India or national security or for any emergencies arising out of natural calamity only. This provision was very much limited in scope in contrast with the 1894 Act which did not define urgent need and gave wide discretion to the acquiring authority.

The 2014 ordinance, most notably, has again expanded the urgency clause by introducing Section 10A under which some broad categories of projects are now waived from the mandatory application of the provisions of the 2013 Act. These are projects vital to (a) national security or defence, (b) rural infrastructure, (c) affordable housing and housing for poor people, (d) industrial corridors, and (e) infrastructure and social infrastructure. Some of the provisions that will now not apply to these projects are the requirements for social impact assessment study, determination of public purpose, public hearing and prior consent of affected families and the prohibition on acquisition of irrigated multi-cropped land. Essentially, having circumvented the fair and democratic processes established by the 2013 Act, the state can once again invoke the principle of ‘eminent domain’ and exercise its sovereign powers to acquire land compulsorily for these purposes, leaving ample scope for bureaucratic discretion, akin to the archaic 1894 legislation.

Provisions related to fair compensation and rehabilitation and resettlement to apply even to previously exempt legislations and projects

The Fourth Schedule of the 2013 Act enumerates thirteen statutes which provide for land acquisition such as the Atomic Energy Act, the Electricity Act, the Railways Act, and the National Highways Act. Section 105 read with the Fourth Schedule of the 2013 Act states that the authorities need not adhere to the transparent and fair processes put in place by the statute. The government, however, had the power to notify that a portion of the provisions of the law (such as those in relation to compensation and rehabilitation and resettlement) may apply to any of these thirteen statutes within one year from the date of commencement of this Act.

On a positive note, the 2014 ordinance amends Section 105 of the 2013 Act so that the provisions relating to compensation, rehabilitation and resettlement, and infrastructure amenities will now apply even to the thirteen statutes that had so far been saved from the application of the law by the Fourth Schedule. While these just measures are certainly a step in the right direction to prevent exploitation of land owners and



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

affected families, it is worthwhile to ponder whether they compensate for the wide and discretionary powers conferred to the State by the Ordinance.

Notably, even the five new categories of projects ushered in by the ordinance have to comply with provisions related to fair compensation and rehabilitation and resettlement. Given the State's absolute powers of eminent domain under the archaic law of 1894, this remains a huge leap in socio-economic development.

Other provisions

The Ordinance also brings in amendments of lesser significance.

The term 'private company' has been substituted and replaced with 'private entity', widening the scope of Act.

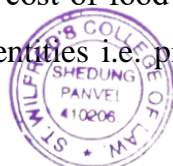
Section 101 has been amended to authorise the State to retain unutilised land for five years or more than a period of five years upto the period specified for setting up any project as opposed to a flat five year period in the 2013 Act.

Section 113 has been amended to give power to the State to remove difficulties which might arise in giving effect to the provisions of the 2013 Act, but which can only be exercised after a period of five years from the commencement of the Act as opposed to a shorter period of two years under the 2013 Act.

The Land Ordinance (now Bill) is bringing back the Colonial Legacy

Forcible land acquisition has always been an issue of life and death for millions of people in India, not only farmers but also agricultural laborers and fish workers. With the Land Ordinance it has become a political hot potato. More than 350 people's organizations gathered at Parliament Street on February 24th, with 25,000 people from Gujarat to Orissa to Assam, and from Himachal Pradesh to Tamil Nadu and Kerala. This show of strength has forced the political parties to take a stand on the issue, leading to heated debates and discussion on the floor of the Parliament. The Ordinance, now Bill, reflects the anti-farmer and anti-poor move of un-democratically amending the 2013 Act on Land Acquisition and Rehabilitation, killing its very spirit and purpose.

The Ordinance brought in by the NDA government just after the Winter session of the Parliament came to an end was an obvious imposition on the country's common people, of the colonial legacy of a perverted vision of development through an unjust and undemocratic modus operandi. The Ordinance is an attempt to open up the land that is the life support, source of livelihood and shelter for India's toiling masses, to wealthy investors, including big corporations and builders. Its intention is to forcibly divert India's agricultural land at the cost of food security, giving a free hand with no ceiling to the private companies as well as private entities i.e. private trusts and expensive profit-making educational and health institutions.



Principal
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

The intention is to benefit private interests in the name of public interest.

The 2013 Act which replaced the British Act on Land Acquisition, for the first time brought in the process of assessing Social Impact (SIA) along with environmental assessment (EIA) in consultation with the affected people and the Gram Sabhas as well as appropriate urban units. This precondition is essential for the proper planning of rehabilitation including identifying and listing of the affected population, the impact on their livelihood and culture, and for making an appropriate plan to compensate those who are made to sacrifice in the name of development, and to do them justice. Assessing options and seeking suggestions for alternatives to minimize impact and displacement would go a long way. The consent of land losers was also an important clause at least for private and PPP projects (the 2013 Act too had left out government projects, unjustifiably) to respect and give our farmers due role, space and primacy in development planning as against 'no level playing field' situation between the monetary capitalists (the corporates) and the natural resource investors (farmers and others).

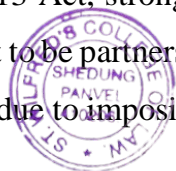
BJP's Half Truths and Propaganda

The BJP leaders are now making false interpretations and unjustifiable arguments implying that the people's movements and pro-people politicians and parties are anti-national, as indicated by the press conference held by Nitin Gadkari and the statement by Arun Jaitley, the Finance Minister in parliament, both of them the architects of the Ordinance and now the Bill. Without entering into dialogue with the agitating farmers' organizations except members of their own 'Parivar', they are deliberately confusing issues and presenting the struggle as a war between Bharat and Pakistan, drawing a false picture of threat to India's security.

Signatures of 70% of the villagers (whose land is being acquired) would be needed as their consent, as also the social impact assessment of installing the project. So, the information will be revealed and it will also reach Pakistan. It (UPA's land law) was a defective piece of legislation and threat to India's security. We corrected it. It had a disastrous impact on security...Our strategic installations had been held up.

This statement an indicator of the frustration and fury among the ruling party led by the Prime Minister that wishes to save the Bill by misleading the people. How can seeking consent of the people concerned, whose lands will be taken for a project, be a threat to the national security but no threat to national security is posed by private corporations' involvement in building strategic projects? The government is after all, allowing PPP and FDI in Defence as well. Does the FM's statement make any sense ?

The people's movements, instrumental in getting the former UPA government to abolish the British Act of 1894 and to bring in the 2013 Act, strongly condemn this fake, communal appeal to disrespect the farmers and deny them the right to be partners in development. SIA and consent will not stop the projects but rather resolve the conflicts due to imposition of projects without rehabilitation.



DR. WILFRED M. DEBOLAW
SHEDUNG-PANVEL 410206

The private and PPP projects have been grabbing land through forcible acquisition standing on the shoulders of the State. The SEZ of Ambani was to get 35000 hectares in Maharashtra, and DMIC is targeting 3,90,000 hectares. While the thousands of hectares of Sardar Sarovar command area land in Gujarat are already diverted to companies, along with waters; and for Industrial Corridors for mining, tourism, water and power projects; now companies are to be granted land that can be forcibly acquired from farmers. Even the colonial 1894 British Act did not permit acquired land to be used for this, and no other country in the world has any such legal and legitimate way to forcibly transfer the farmers', fish workers', and common peoples' resources to profit making corporations.

Mr. Gadkari is claiming the credit for including 13 Acts under the purview of the 2013 Act but this is being done after killing the spirit and main provisions in the Act. Mr. Gadkari and BJP spokespersons have also resorted to a farcical justification for the Ordinance, referring to 31.12.2014 as the deadline, for including the Acts.

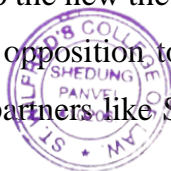
The fact is that Section 105 allowed 1 year to bring in these 13 Acts so as to allow amendments in those, and make land acquisition procedures and provisions therein, consistent with the new Act. Section 105 also elaborates the procedure of placing any amendment, notification before the parliament for 30 days, seeking approval. Instead of doing this, the BJP government waited till the last day to include the Acts, only after excluding the main pro-people provisions.

The farmers in dam areas like Tata's, Gosikhurd, Waang Marathwadi, Narmada or in industrial areas in Nandigram, POSCO or hill city project like Lavasa have experienced that the wasteland and previously acquired but unused land is ignored by the government and more land, even irrigated, multiple crop land is forcibly acquired for non-agricultural purposes. There is not less than 100,000 hectares of MIDC land, acquired for industries but left un-utilized. Of the land acquired for Varasgaon Dam, 141 hectares were leased out for bungalows once Lavasa City came up, engulfing the dam itself!

The 2013 Act for the first time, brought in a restraint by suggesting a certain percentage to be decided by the state as a limit for acquiring multiple crop land in a district and a state. The movements believed no agricultural land should be acquired as today's single crop land becomes multiple crop land tomorrow. But BJP doesn't wish to put any limit to grabbing and destroying even prime agricultural land by changing the 2013 provisions.

The Penalty Clause (Section 87) in the 2013 Act is also changed The original stringent provision about punishment for violation of this Act by any government official has been reversed. Earlier the Head of the Department was held responsible if the violation took place with their knowledge and connivance. The Amendment removes this provision and actually provides special immunity to the government officials under Section 197 of CCP. The common persons cannot file a case (FIR) against the violators without a sanction, according to the new the Bill, 2015.

All this proves that the strong opposition to the Ordinance and the Bill of 2015 by many opposition parties and some of the NDA partners like Shiv Sena and WJD is fully justifiable. We appreciate their



Qu Singh
PRINCIPAL

ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

taking a position in favor of the farming community in the country at this crucial juncture. Considerations of food security and the demand for rehabilitation including guaranteeing alternative livelihood (missing in the 2013 Act itself), has now led all those who support our food growers and toiling masses including small traders and artisans, to challenge the anti-people legislation, the land Acquisition Bill of 2015 which will lead to more suicides and make millions of farmers into landless laborers.

We instead demand further pro-people amendments as recommended by the two Parliamentary Standing Committees in the 2013 Act to save farmers' lives and livelihoods of millions.

CHAPTER 10

LARR (AMENDMENT) BILL, 2015

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in Lok Sabha on February 24, 2015 to replace an Ordinance. The following amendments were circulated by the government on March 9, 2015:¹

Change to public purpose

- The Bill amends the Act to include acquisition of land for private hospitals and private educational institutions within the definition of public purpose.
- The amendments remove this provision of the Bill. This implies that acquisition of land for private hospitals and private educational institutions is no longer included within the definition public purpose.

Changes to five categories of exempted projects:

- The Bill allows the government to exempt five categories of projects from:
 - (i) Social Impact Assessment,
 - (ii) limits on acquisition of irrigated multi-cropped land, through a notification, and
 - (iii) consent provisions.

These five categories are:

- (i) defence,
- (ii) rural infrastructure,
- (iii) affordable housing,
- (iv) industrial corridors, and
- (v) infrastructure and social infrastructure.




PRINCIPAL
 ST. WILFRED'S COLLEGE OF LAW
 SHEDUNG-PANVEL 410206

1. PRS Legislative Research, Institute for Policy Research Studies, New Delhi, March 10, 2015

The amendments make the following changes to this provision:

- *Industrial corridors*: The amendments clarify that land acquired for industrial corridors will be for industrial corridors set up by the government and government undertakings. Further, land can be acquired up to 1 km on both sides of the designated railway line or road of the industrial corridor.
- *Social infrastructure*: The amendments remove social infrastructure as an exempted category.

Changes to SIA and limits on irrigated multi-cropped land:

- The Bill allows the government to exempt the above five categories of projects from SIA and limits on irrigated land, through a notification. The amendments add that before issuing this notification, the government must ensure that the extent of land being acquired is in keeping with the minimum land required for such a project.

Survey of wasteland:

- The amendments add that the government must conduct a survey of its wasteland including arid land, and maintain a record containing details of such land, as may be prescribed by the government.

Changes to rehabilitation and resettlement:

- Under the Act, the rehabilitation and resettlement award for each affected family includes employment for at least one member of the family.
- The amendments change this provision to ensure compulsory employment to at least one member of such an 'affected family of a farm labourer'.

Changes to Land Acquisition, Rehabilitation and Resettlement Authority:

- The Act provides for the establishment of a Land Acquisition, Rehabilitation and Resettlement (LARR) Authority which may be approached in case a person is not satisfied with an award under the Act.
- The amendments state that the LARR Authority must hold its hearing in the district where the land acquisition is taking place, after receiving a reference from the Collector and giving notice of this reference to all concerned parties.

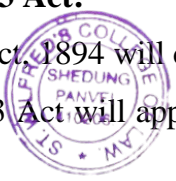
Changes to application of 2013 Act:

- The Land Acquisition Act, 1894 will continue to apply in certain cases, when an award has been made under it. The 2013 Act will apply in case an award has been made five years prior to the

Qus Singh

PRINCIPAL

ST. WILFRED'S COLLEGE
SHEDUNG-PANVEL 410206



commencement of the 2013 Act but the physical possession of the land has not been taken or compensation has not been paid.

- The Bill states that in calculating the five year time period, any period where possession of land was taken but the compensation is lying deposited in a court or any account, will not be counted. The amendments change ‘account’ to ‘designated account’.

Offences by government employees:

- The Bill states that if an offence is committed by a government employee he cannot be prosecuted without the prior sanction of the government, as provided in Section 197 of the Code of Criminal Procedure, 1973.
- The amendments state that the government employee can be prosecuted if procedure laid down in Section 197 of the Code of Criminal Procedure, 1973 is followed. Section 197 requires the prior sanction of the government prior to prosecuting a public servant.

Critical analysis of the 2015 Bill²

(i) Misuses the principle of ‘public purpose’

The 2015 Bill, like the LARR Act endorses the notion of ‘eminent domain’ of the state and fails to adopt a human rights definition of ‘public purpose’ or indicators to determine whether a project truly benefits and improves the well-being of all.

2. www.dnaindia.com/india/report-land-acquisition-bill-implies-deep-trouble-2072222

The Bill provides exemption from Social Impact Assessment, acquisition of irrigated multi-cropped land and consent for five categories of projects: national security and defence; rural infrastructure; affordable housing; industrial corridors; and, infrastructure (including public-private partnership projects on central government-owned land). The obscurity of these categories, without the provision of adequate detail, allows for wide application and misuse of ‘public purpose.’ The Bills states that land for industrial corridors can be acquired up to one kilometre on both sides – a provision that could displace and destroy the livelihoods of thousands of small farmers across India.

(ii) Violates international human rights law, guidelines and principles

The Bill violates several international human rights laws and principles. First is the recognition of land as a human right since it is integral to the life, sustenance culture, and livelihood of land-dependent populations, including farmers, agricultural workers, pastoralists and forest-dwellers. Second is the principle of ‘prior informed consent.’ The basic tenet of a democracy is that people must have a say in decisions that directly affect their lives and livelihoods. The Bill obliterates the need for consent for the

five categories above, thereby sanctioning land grabbing. Third is the need for ‘human rights impact assessments’. The five categories are exempt from Social Impact Assessment to determine the effects of land acquisition on affected families. The UN Basic Principles and Guidelines on Development-based Evictions and Displacement, and principles related to large-scale land acquisitions, inter alia, mandate comprehensive impact assessments to be undertaken in advance and stipulate procedures to be followed. Fourth is the need to adhere to human rights standards at every stage, including resettlement. All affected families, irrespective of the land tenure they possess, must receive equal benefits. Fifth is the principle of ‘social function of land’ that calls for equitable use of land. The redistribution of land from the poor to the non-poor, as sanctioned in the Bill, is a reversal of this principle. The Bill also contravenes principles of non-discrimination, gender equality, sustainability, and inter-generational equity.

(iii) Does not protect food security

The majority of cases of violations of the right to food are related to the expropriation of land, forced evictions, and displacement. The amendment in the Bill to prohibit the acquisition of multi-cropped land is a dangerous step, and would result in dependence on food imports and economic instability.

(iv) Does not check against misuse

The history of land acquisition in India is replete with evidence of excess land being acquired and diverted. This is apparent in most airport redevelopment projects. The Centre for Science and Environment’s green rating survey 2012 reveals that Indian iron and steel plants have about 1,200 hectares of land per million tonne of installed capacity while a well-designed plant does not need more than 200 hectares. The Bill, however, does not promote minimising land acquisition. While it states that wasteland should be surveyed and recorded, it does not advocate the use of this land or the need to seek alternatives and less land-intensive inputs for industry.

The Bill also dilutes the provision of returning unused land after “a period of five years”, by inserting the words “a period specified for setting up of any project or for five years, whichever is later.” This could promote inequality and declines in productivity.

(v) Does not address historic injustice

The greatest paradox of India’s growth paradigm is the phenomenon of the poor subsidising the lifestyles of the rich. At least 70 million people have been displaced for ‘development’ projects in India since independence; the majority without rehabilitation. The beneficiary population of these projects is, however, different from the displaced population. Land is the basis of livelihood for most Indians, especially women. The assumption that monetary compensation for land is sufficient violates the human rights to work and to an adequate standard of living. Furthermore, most of the affected persons are not land-owners but share-croppers, agricultural labourers and forest workers, including Dalits and adivasis,



PRINCIPAL
SHEDUNG-PANVEL 410206

who are never compensated. Instead of redressing the historic injustice of forced land acquisition, the 2015 Bill will further increase marginalisation.

(vi) Will not promote growth in GDP

Several reports highlight that obstacles to India's economic growth include fiscal indiscipline, tax evasion, food inflation, lack of investment in agrarian reform, and large trade and investment deficits. Land acquisition is not the problem, but is being projected as the panacea.

On the contrary, forced land acquisition contributes to loss of GDP by increasing rural and urban poverty. The economic cost of displacement to the country is significantly higher than the perceived benefits of exclusionary industrial development. The tragedy is that India has never documented its displaced persons or assessed the impact of the collective loss of their livelihoods, land, housing, natural resources, food, health, and education on the nation's economy.

It is ironic that while advocating 'Housing for All by 2022' and increasing budgetary allocations to MNREGA, the government has passed a Bill that will cause more rural unemployment, landlessness, and homelessness. There is an urgent need to question the paradigm of neoliberal growth, and instead promote holistic development through the adoption of a human rights approach. The government should optimise land use, develop sustainable and equitable alternatives, promote non-land intensive industrialisation through improved technology, and implement human rights laws.

National development and economic growth can be realised only when there is a significant improvement in the lives of all Indians.

The Constitution of India declared India to be a sovereign, socialist, secular, and democratic republic. While there was uproar, earlier this year, of a government advertisement that omitted the words 'secular' and 'socialist,' the Land Bill 2015, in effect, has deleted the word 'socialist.'



Qus Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

CHAPTER 11

LARR (AMENDMENT) BILL IN NEWS

For the third time in recent months, India's cabinet used an unusual maneuver – issuing an “executive order” — to push forward with its economic overhaul agenda.

The executive order, or ordinance, tries to make it easier for industrial projects to acquire land. The ordinance chips away at a major obstacle to industrial investment. Several proposed economic overhauls from India's new government had been delayed by opposition protests in Parliament, which ended its session recently.

Ordinances are generally used to implement laws only in case of emergencies when Parliament isn't in session. For an ordinance to remain law, it must eventually be approved by Parliament. However, under Parliamentary rules, there are special procedures that could make it easier for the government to ultimately win Parliament's approval for these ordinances.

Finance Minister Arun Jaitley said in announcing the ordinances that the changes focus on speeding up development in five areas: development of industrial corridors, social infrastructure such as education, rural infrastructure such as roads and power, housing for the poor, and the country's defense capabilities. The ordinance makes land acquisition easier in these areas by exempting them from several provisions of current law, Mr. Jaitley said. For instance, such projects now won't need the consent of 80% of landowners during acquisition, as is the requirement in other sectors.

However, the ordinance also makes another significant change: It expands the current law to increase the likelihood that landowners will be compensated in projects, such as highways and rail, where the government is involved, according Mr. Jaitley.

In similar moves last week, the cabinet approved ordinances for increasing the cap on foreign ownership in local insurance ventures to 49% from 26%, and for facilitating auctioning of coal mining licenses.

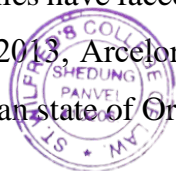
The latest move add to criticism from opposition parties, which have objected to the use of ordinances, arguing that they show the government's intention to muscle through its agenda. The government has defended its actions, saying the ordinances were necessary because opposition parties weren't allowing parliament to function.

“The ordinance demonstrates the firm determination of the government for reforms,” Mr. Jaitley.

Mr. Jaitley said that while the ordinance on land acquisition aims to facilitate industrial development, the government wasn't diluting provisions that deal with compensation for land owners, mostly farmers.

“In a nutshell, we have tried to achieve a balance, where higher compensation will continue. At the same time, procedural rigors will be loosened or eased.”

In recent years, foreign companies have faced troubles in acquiring land for projects, prompting some to cut back their investments. In 2013, ArcelorMittal, the world's largest steelmaker, dropped its plan to build a plant in the eastern Indian state of Orissa, citing delays in acquiring land as a main reason.



SHEDUNG-PANVEL 410206

The changes now being introduced are important for Prime Minister Narendra Modi's "Make in India" campaign that intends to boost Indian manufacturing. Mr. Modi has often in his speeches addressed foreign investors, inviting them to manufacture goods in India.

Mr. Jaitley acknowledged that major changes in policies were needed to achieve that objective. "Unless radical steps are taken, manufacturing continues to be a challenge," he said.

The Union Cabinet, chaired by Prime Minister Narendra Modi, decided to amend the Act to bring under its purview 13 central legislations, including those relating to defence and national security, to provide higher compensation and rehabilitation and resettlement benefits to farmers whose land is being acquired.

Finance Minister Arun Jaitley said the government decided to relax certain provisions of the Act and add Section 10 A to the legislation keeping in the mind development needs of the society.

He said the mandatory "consent" clause and Social Impact Assessment (SIA) will not be applicable if the land is acquired for five purposes including national security, defence, rural infrastructure including electrification, industrial corridors and building social infrastructure including PPP where ownership of land continues to be vested with the government.

However, the compensation and rehabilitation and resettlement packages will be applicable as per the new Land Acquisition Act for acquiring land for these purposes.

As per the changes brought in the ordinance, multi-crop irrigated land can also be acquired for these purposes.

"Such projects are vital to national security and defence of India including preparation for defence and defence production," Jaitley said justifying the government's decision to bring changes in the Act enacted during previous UPA rule.

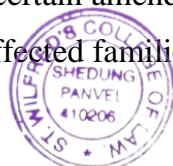
Asked about the consent clause, Jaitley said "if the land acquisition is for the five purposes, then the consent clause will be exempted".

The earlier Act provided for consent of 70 per cent of land owners whose land is acquired for PPP projects.

Jaitley said there is a mandatory condition for provision of job for those whose land is acquired for industrial corridors.

With this decision, rehabilitation and resettlement and compensation provisions of the Right to Fair Compensation and Transparency in Rehabilitation and Resettlement Act, 2013 will be applicable for the 13 existing central pieces of legislation including the Coal Bearing Areas Acquisition and Development Act, 1957, the National Highways Act, 1956 and the Land Acquisition (Mines) Act, 1885.

Government said Cabinet approved certain amendments in the Act "in order to remove" many difficulties which have been reported and certain amendments have been made to further strengthen the provisions to protect the interests of the 'affected families'.



Principle
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

In addition, procedural difficulties in the acquisition of land required for important national projects required to be mitigated, the government said in a release.

Government said its decision to bring excluded 13 Acts under the Land Acquisition Act for compensation and Rehabilitation and Resettlement purposes was a "pro-farmer step". "In the process of prolonged procedure for land acquisition, neither the farmer is able to get benefit nor is the project completed in time for the benefit of society at large.

"Therefore the present changes allow a fast track process for defence and defence production, rural infrastructure including electrification, housing for poor including affordable housing, industrial corridors and infrastructure projects including projects taken up under Public Private Partnership mode where ownership of the land continues to be vested with the government," it said.

The government further said these projects are essential for bringing in better economic opportunities for the people living in these areas and would also help in improving quality of life.

"The existing Act vide Section 105 (read with Schedule IV) has kept 13 most frequently used Acts for Land Acquisition for the central government projects out of the purview.

These Acts are applicable for national highways, metro rail, atomic energy projects, electricity-related other projects etc. Thus, a large percentage of farmers and affected families were denied the compensation and R&R measures prescribed under the Act," it said.

The government said the present amendments bring all those exempted 13 Acts under the purview of this Act for the purpose of compensation as well as rehabilitation and resettlement.

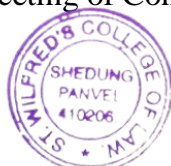
"Therefore, the amendment benefits the farmers and the affected families," it said.

With the changes, the R & R (rehabilitation and resettlement) and compensation provisions of the Act will be applicable to the laws including the Atomic Energy Act, 1962, the Indian Tramways Act, 1886, the Railways Act, 1989, the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 and the Damodar Valley Corporation Act, 1948.

Having had to promulgate an ordinance twice on the bill and having failed to get the bill cleared in Parliament, the government referred it to a 30-member committee comprising MPs from both the Houses. The Joint Committee has been mandated to submit its report on the first day of Monsoon Session.

Interestingly, the Congress, which has vociferously opposed the amendments introduced in the bill, was silent on the move. Party vice-president Rahul Gandhi slammed the government for making changes to the UPA bill but did not touch upon the joint committee aspect.

Sources within the party said the Congress was divided on the question of sending the bill to a parliamentary committee. A meeting of Congress leaders on Tuesday morning saw the divergent views coming to the fore.



Rajiv Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

An influential section of the party, comprising some Rajya Sabha members, was not in favour of demanding or supporting the bill's referral to the Joint Committee as the party had already taken the stand that it wanted the 2013 bill unchanged. "How can then we be part of a committee and consider the amendments then," a senior leader asked.

On the other hand, another section felt they should try to block the bill using parliamentary procedures. They, sources said, argued that the committee should be used as a tool to convey the party's opposition. Their argument was that the Congress had been demanding referral of many bills to the select committees and attacking the government for bypassing standing committees.

One of the leader said that "How can we then oppose when the government says let the bill be considered by a parliamentary committee. We can fight within the panel and at the end give dissent notes. Then we can take the fight to the Parliament."

Rahul Gandhi accused the NDA government of "killing" the Land Acquisition Act brought by the UPA and said Congress will fiercely resist within and outside Parliament the attempt of "suit-boot ki sarkar" to "grab" farmers' land.

"This government is in a hurry to pass this bill... It will not happen so easily. If we are not able to stop it here (in Parliament), we will hit the streets against it outside," the Congress Vice President said in Lok Sabha during a debate on the land bill.

He drew a parallel between a daylight robbery and the proposed law, saying an economist had told him that thieves wearing suits now strike during daylight. Rahul's repeated jibes at the Modi government invited running protests from the treasury benches.

Hitting out at the bill, he termed it as an attempt by the government to acquire land, whose price has been rising, for industrialist "friends" and crony capitalists. "This government wants to give land to crony capitalists and its industrialist friends because it's a 'suit-boot ki sarkar'," he said.

Rejecting the government's stand that the new law was needed for faster development, Rahul quoted an RTI reply, saying it has shown that only 8 per cent of projects have been hampered due to non-availability of land. He said there is no dearth of land for development purposes as 40 per cent of land in the SEZ was lying unutilised but the NDA government was hell-bent on taking the land of only the farmers.

Terming the government as anti-farmer and anti-poor, Rahul said it does not want to acquire land in Bundelkhand or in the deserts of Rajasthan but those near big cities like Noida, Gurgaon and Pune to make money as their prices have been rising. "Gold lies beneath your feet. These people want to snatch it," he said amid cheers from Congress benches. He said, "It took the UPA government two years to bring the land acquisition law but the NDA government killed it within days of coming to power. The first blow with an axe was right at its (bill) throat when the government decided to remove the consent clause.

"When the body had fallen, then it dealt a second blow of the axe. You said there should be no social impact assessment."



Qu Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

The Congress leader said the law enacted in 2013 had a provision that land, acquired from a farmer, will have to be returned to the farmer if no project comes up in five years. "This was the third blow when you said that there is no need to return land to farmers even if the project does not take off or is delayed by 10, 20 or 50 years," he said.

Taking a dig at BJP leaders, Rahul said its top leaders like L K Advani, Sushma Swaraj and Rajnath Singh, while sitting in opposition benches, had "even thumped the desks" when land bill was passed in 2013 during UPA's tenure. "They had supported the bill then, but I don't know why they changed their stance today. It can either be that their mind changed, or they are scared lest they say something wrong," the Congress leader said.

Earlier, while beginning his speech, Rahul took jibes at the treasury benches saying "I am thankful to BJP members for having come (to the House) in such large numbers to listen to my speech. I had thought I will be speaking to empty benches."

He also said that many members from the treasury benches were "busy shopping or having lunch." Taking a dig at Rural Development Minister Birender Singh, who was in Congress before joining BJP, the Congress Vice President said he used to agree with him on this issue.

Setting out on a padyatra on April 30, 2015 to meet farmers in the Vidarbha region of the state, Congress Vice President Rahul Gandhi was told by several of them that insurance companies were engaging in fraud and that the requisite compensation was not paid to them for crop loss.

Rahul launched his 'sanvad yatra' from Gunji village in Maharashtra's Amravati district to highlight farmers' woes and the agrarian situation in the region.

He visited five villages between Gunji to Ramgaon and will meet the farmers who have suffered crop losses due to unseasonal rain as also the families of those who have committed suicide over crop loss.

Sitting on a jute mat at a temple in Hirapur village, the Congress vice president gave a patient hearing to a group of marginal farmers.

The villagers alleged that "insurance companies were only selecting sample areas for giving compensation while the rest of the farmers were being deprived by them of the benefits due".

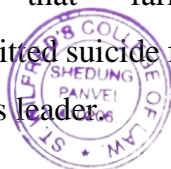
"The insurance companies send their agents who mop up business for foreign giants as an incentive but, ultimately, it is the poor farmer who loses," a villager, Pandurang, complained to Rahul.

Some of them said that pesticides and fertilisers were being supplied to them at high prices even though the cost of production of such items was quite less.

The villagers also drew Rahul's attention to the damage their soya crop has suffered in the unseasonal rainfall. Soyabean prices have crashed heavily due to the damages, another farmer said.

Hailing Rahul's initiative in opposing the Land Acquisition Bill, 2015, in Parliament, the villagers said they was apprehension that farm land would be acquired for business.

Nearly 171 farmers have committed suicide from 2006 to 2014 in Dhamangaon taluka of the district, the villagers informed the Congress leader.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Under a scorching sun, Rahul went on foot from village to village. The padyatra saw the participation of a large number of Congress workers, particularly from Youth Congress, waving the party flag, banners and posters.

“Rahul Gandhi is resorting to a day’s excursion. Where was he when lakhs of farmers were dying during the last 10 years when his party was in power? Such things of one-day publicity are going to boomerang,” said the senior minister.

He visited five villages between Gunji to Ramgaon and met the farmers who have suffered crop losses due to unseasonal rain. He is accompanied by MPCC president Ashok Chavan and senior state Congress leaders.

Maharashtra is one of the states that experienced severe agrarian crisis and Amravati division in Vidarbha region has witnessed many suicide cases of farmers this year.

Ahead of his visit, a farmer, Gajanan Sheshrao Khongal, allegedly committed suicide by jumping into a well in Morshi tehsil of the district on Tuesday.

In Gunji, Rahul met family members of farmers Nilesh Walke and Ambadas Vahile who had committed suicide recently.

Gunji, with a population of 1,200 people, was the first stop in the ‘padyatra’ undertaken by the Congress scion where he also met a group of children from orphanages and interacted with them briefly.

Subsequently, Rahul marched to Shahpur village, another suicide-prone area, five kms from Gunji in Amravati district, which is represented by Virendra Jagtap of Congress in the Maharashtra Assembly.

The Congress Vice President accused the government of not procuring the the produce of farmers, a charge that was flatly rejected by Food Minister Ram Vilas Paswan.

Raising the issue during Zero Hour, Gandhi said he wanted to apprise the House of the pain and problems of the Punjab farmer whose produce is lying in Mandis and is not being procured by the government.

Targeting the Prime Minister, he said he is on tours and should also visit Punjab so that he understands the plight of farmers.

Amid protests from BJP benches, Gandhi also took a swipe at the Prime Minister’s ‘Make in India’ initiative, questioning whether farmers are not contributing to ‘Make in India’ by providing food to the entire country.

Even before the Act has been fully implemented by either State or Union government, the Narendra Modi government has created an impression that it is an impediment to the development needs of the country.

Mukherjee, as a senior Cabinet colleague of former Prime Minister Manmohan Singh, played no mean role in bringing about the much needed progressive legislation. The LARR Act, meant to expedite land acquisition, though not the best, is progressive. It ensured adequate compensation and rehabilitation of the affected. The ordinance, on the other hand, promulgated in the name of economic reforms and

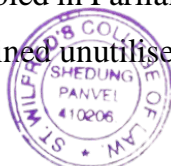
development, takes a significant step backward in social justice and violates all democratic norms. By choosing the ordinance route, Prime Minister Modi has displayed least patience and respect for parliamentary traditions. Matters concerning the lives of millions of farmers cannot and should not be decided by a mere ordinance. It is a matter of grave importance and needs a thorough debate in Parliament.

The LARR amendment ordinance creates a separate category of projects to be fast-tracked and covers industrial corridors, defence production, rural infrastructure including electrification, housing for the poor and projects taken up under the Public-Private Partnership mode.

It may be recalled when Modi was Chief Minister of Gujarat, he enacted the Special Investment Region Act, 2009, to facilitate large-scale land acquisition and developed 13 SIRs and four industrial areas centered on manufacturing and promoted crony capitalism which gave his government the sobriquet of “Ambani-Adani-Sarkaar.”

Vinayak Chatterjee, chairman of the Confederation of Indian Industry’s National Task Force on Infrastructure, welcoming the LARR Act when it was passed, said: “The term ‘public purpose’ has now been clearly defined. The misuse of this clause under ‘eminent domain’ was the bane of the earlier legislation. It led to forcible, heartless acquisition programmes as well as lazy acquisitions where acquired land was largely in excess of needs.” When the apex industry body was satisfied with the LARR Act what was the necessity to dilute safeguards given to land owners even before giving a chance to implement it fully? The Mid-Year Economic Analysis by the government’s chief economic advisor, Arvind Subramanian, had said recently that given the current corporate debt overhang, there was going to be difficulty in attracting new private investments even if the past backlog was cleared. One of the reasons cited for the urgency in promulgating the ordinance is Section 105 of the LARR Act which provides for amending 13 Central legislations like the Land Acquisition (Mines) Act, 1885, National Highways Act, 1956, Coal Bearing Areas Acquisition and Development Act, 1957, Railways Act and the Electricity Act by 1 January 2015. The government, through a Notification in Parliament, could have extended the deadline instead of resorting to an ordinance.

By exempting special categories of projects from social impact assessment and obtaining consent of affected families mandated by the LARR Act, the BJP has put the clock back. Jaitley’s claim that priority of the government was not only to ‘protect’ the interest of farmers but also to balance it with the development needs of society lacks credibility. The ordinance waters down the five-year time limit put on projects after which the land would be returned to the owner if it remained unutilised. A report of the Comptroller and Auditor-General of India on Special Economic Zones, tabled in Parliament in November last, found that out of 45,635 hectares of notified lands 38 per cent remained unutilised even after several years of acquisition.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

In the Mukesh Ambani promoted SEZ in Navi Mumbai, no operations had taken place in 1,250 hectares of land at Dronagiri acquired in 2006. Several industrial houses had raised loans of Rs. 6,309.53 crore mortgaging leasehold government land. The ordinance is tailor-made to help these entities. But according to Jaitley, a few “oversight errors” had crept in the LARR Act and the ordinance was to ease “procedural rigours.”

The ordinance relaxes norms for land purchases for affordable housing, defence and defence manufacturing, PPP (Public – Private Partnership) projects, which include private health and educational institutions, industrial corridors and rural infrastructure. Such projects would neither require the mandatory consent of land owners nor social impact assessment any longer. Hundreds of farmers have committed suicide protesting such unfair acquisition. These two key provisions are central to addressing the issue of forced land acquisition and resulting impoverishment of the communities.

It was forced acquisition of land which led to massive protests in places like Nandigram, Singur, Kalinganagar, Kakrapalli, Bhatta Parsaul, where many people died, and was responsible for the UPA government enact the LARR legislation. For years, Narmada Bachao Andolan, Niyamgiri Suraksha Parishad, Anti-SEZ protests in Raigarh, Jhajibhar had been demanding the repeal of the colonial era Act and enactment of a new people-friendly development planning legislation and it was fulfilled by the UPA government only to be undone by the BJP in such a short period.

A White Paper issued brought out by the Ministry of Road and Surface Transport a couple of months before the New Year eve promulgation of the ordinance blamed the LARR Act for holding up sanctioned projects worth Rs. 4 crore. With the coming into force of the ordinance, the agency acquiring land will have to compensate and resettle only the land owners.

Millions of agricultural workers and share croppers are left high and dry. The distinction between fertile and unfertile land, irrigated and non-irrigated, has also been done away with in regard to acquisition of land for the five specified ‘eminent domain’ sectors. Land can now be acquired for these projects without having to go through the process of Social Impact Assessment. By requiring the government to seek the consent of 70 to 80 per cent of the affected families, the LARR Act gave the citizens a say in acquisition of their land and prevented arbitrary exercise of power by the State.

With the stroke of the pen of the President just before midnight, 31 December, the BJP has taken the nation back to the colonial era which led the Congress to coin the acronym ‘FAIL’ for the Modi government. F stands for anti-farmer, A for anti-accountability, I for intolerance and L for forcible land acquisition.




PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

CHAPTER 12

CONCLUSION

It is often said that a just land acquisition – with all the involved parties satisfied – is an impossibility. However, considering the aspirations of Indian economy and the interests of farmers and land owners at stake, a democratic and progressive legislature governing the consent, compensation, resettlement, and resolution of conflicts on land acquisitions is long overdue. And with the ordinance which passed early this year; on the Land Acquisition, Rehabilitation and Resettlement Bill, 2013; looks like we have taken a major step backwards.

Legislature on land acquisition in India dates back to the 1894 law, which allowed colonial authorities to carry out the acquisition regardless of how the person whose land is sought to be acquired is affected. Even after India's independence, no safeguards or appeal mechanism were brought in to hinder the acquisition process, nor was there any law concerning the resettlement and rehabilitation of the displaced. As expected, the farm houses of the rich and the affluent were never acquired. It was always the farmers, agricultural workers and tribals who suffered.

In 2011, the twelfth five-year plan noted that of the estimated 60 million people displaced in development projects since independence, over 40% were tribals. Considering that tribals constitute about 8% of India's population, the numbers are quite high. An estimated one in ten Indian tribal is a displaced person. The draft of the government's National Policy for Rehabilitation states that around 75% of the displaced are still awaiting rehabilitation. Given the extent of exploitation the voiceless millions have gone through, the reformation of laws governing land acquisition in India was extremely critical.

The Union Ministry for Rural Development initiated the process of amending the Act back in October 1998. The bill underwent numerous changes, and was passed by the Lok Sabha twice, but failed at the Rajya Sabha on both occasions. The bill, over these years, became more and more lenient, hence compromising with the interests of the displaced. Over a period of seven years, and after being reviewed by two Parliamentary Standing committees, the bill was finally passed in September, 2013.

The Land Acquisition, Resettlement and Rehabilitation Act, 2013

The Land Acquisition, Resettlement and Rehabilitation Act, 2013 ensured the displaced a compensation up to four times the market value of land in rural areas and two times in urban areas. The act made it mandatory to obtain prior consent of owners of the land – 70% for Private Public Participation (PPP) projects and 80% for private projects, which could be raised to 100% by respective State Governments.

The 2013 law exempted 13 laws from the purview of the bill, which included the Indian Railways Act, National Highways Act, Land Acquisition Mines Act, Coal Bearing Areas Acquisition & Development Act etc, under which the bulk of the land acquisition takes place. While the colonial legislation did not permit the government to acquire land for the corporate sector, the current piece of legislation did. Despite these loop holes, the 2013 Act was seen as a step forward.



PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

Ordinance to amend the Land Acquisition Act, 2014

On 5th January, 2015, the new government amended the 2013 act through an ordinance. Although the compensation for the displaced remains the same, the ordinance removed the mandatory consent clause – both the 70% consent for PPP and 80% consent for private projects. Unlike the 2013 Act, the ordinance enabled the acquisition of multi-crop irrigated land as well. The provisions related to food security bill were removed. A Social Impact Assessment (SIA) of the acquisition and provisions requiring public hearing and Gram Sabha were omitted, hence removing the role of Panchayats in the negotiation process altogether. Also, according to the ordinance, a land remaining unused for more than 5 years will not be liable for return to its owner anymore.

Earlier the acquisition for private purposes was limited to Private Companies, which are registered under the Companies Act. The ordinance has extended it to any Private Entity which includes proprietorship, partnership, and NGOs as well.

While in opposition, the BJP was opposed to ordinances altogether, calling it undemocratic and authoritarian. In just six months since it has come to power, the BJP government has already used ordinances thrice.

In its defense, the BJP has argued that the rates of compensation have been kept unchanged. But what about consent? Does axing of the SIA not imply that it would no longer be necessary to identify, compensate and rehabilitate millions of landless peasants who work on land owned by others? In a recent report, the National Sample Survey Office revealed that only 57.8% of rural households are engaged in agriculture. What about rehabilitating the rest of the population?

A matter that affects a huge majority of Indian population, especially farmers and dalits, which underwent debates and discussions over decades, was brought to conclusion through an ordinance, which favors the interests of the corporates and real estate barons, and cripples the voiceless millions. The 2013 Act, despite its shortcomings to provide complete cover to the displaced, was framed after consulting the stake holders over a period of seven years. It was reviewed by two Parliamentary Standing Committees, both headed by senior BJP leaders, Kalyan Singh and Sumitra Mahajan. The new BJP government changed the Act over the stroke of a pen, avoiding every debate and discussion, and took it closer to the old colonial Act of 1894.

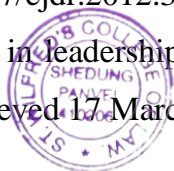
How long can the government deny the rights to farmers and agricultural laborers and remain unwilling to establish the balance between democracy and development? If this does not raise questions on India being a democracy, then what does?



Q. Singh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

BIBLIOGRAPHY

- A Mark of Urgency Land Ordinance a Step towards Reviving Investment Climate. (2014, 12 31). Business Standard.
- Asthana, S. (2014, 12 31). Land Acquisition Act: Right Step, Wrong Route. Business Standard.
- B. Terminski, Development-Induced Displacement and Resettlement: Theoretical Frameworks and Current Challenges, research paper, Geneva, 2013.
- Bedford Biofuels https://en.wikipedia.org/wiki/Bedford_Biofuels Kenya, 2009
- Bhat, P. I. (2004) Fundamental Rights: A Study of their interrelationships. Kolkata: Eastern Law House.
- Building India: Accelerating Infrastructure Projects. McKinsey (2009).
- Cernea, M. 1991. Socio-Economic and Cultural Approaches to Involuntary Population Resettlement. Edited by Michael M. Cernea. World Bank, Oxford University Press.
- Cernea, M. (2013): Progress in India: New Legislation to Protect Persons Internally Displaced by Development Projects, 21 October 2013. www.brookings.edu/blogs/up-front/
- Chakravorty, Sanjoy. 2013. The Price of Land: Acquisition, Conflict, Consequence. New Delhi: Oxford University Press.
- Chandrachud, Y. V. 2009. Concise Law Dictionary. New Delhi: LexisNexis Butterworths Wadhwa Nagpur.
- Decoded: What Changes Has the Narendra Modi Government Made in the Land Acquisition Ordinance. (2014, 12 30). Daily News and Analysis.
- Dugal, I., & Sanjay, P. (2014, 07 25). India Opens the Funding Tap for Infrastructure Projects. Live Mint.
- Government Approves Ordinance to Ease Land Acquisition. (2014, 12 30). Business Standard.
- Guha, A. (2012): Social Impact Assessment in the Draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011: A Critical Overview In 'Anthropological Impact Assessment of Development Initiatives'. (2012) Eds. A.K. Danda, K.K. Basa, K.K. Misra. Jhargram: Indian National Confederation and Academy of Anthropologists.
- Guha, A. Land Law and the Left: The Saga of Disempowerment of the Peasantry in the Era of Globalization (2007) pp. 259 + xxviii (index, glossary and references) Concept Publishing Company: New Delhi ISBN 978-81-8069-398-4
- Guha, A. (2013) The Macro-Costs of Forced Displacement of the Farmers in India: A Micro-Level Study. European Journal of Development Research, advance online publication, 31 January 2013; doi:10.1057/ejdr.2012.37
- "Land Bill: Opposition, in leadership of Sonia Gandhi, marches towards Rashtrapati Bhawan" (Post.jagran.com). Retrieved 17 March 2015.



Principal
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- Modi Government to Give Industry its Promised Land. (2014, 12 29). Hindustan Times.
- Nataraj, G. (2014). Infrastructure Challenges in India: The Role of Public-Private Partnerships. Observer Research Foundation.
- Ordinance Raj begins, 2 days ahead of 2015: Land acquisitions can now be accelerated. (2014, 12 30). The Economic Times.
- Pellissery, Sony and Sattwick Dey Biswas. (2012). Emerging Property Regimes In India: What It Holds For the Future of Socio-Economic Rights? IRMA Working Paper 234.
- Pellissery, Sony and Sattwick Dey Biswas. (2012). Emerging Property Regimes In India: What It Holds For the Future of Socio-Economic Rights? IRMA Working Paper 234. PP. 9-16.
- Pellissery, S. 2014. Land rights as social rights. The case of India. FLOOR Working Paper No. 23. Paper prepared for the workshop »Understanding Southern Welfare – the B(R)ICS countries, 24–26 November 2014, Center for Interdisciplinary Research (ZiF), University of Bielefeld, Germany.
- Public Private Partnership: Partnering for Growth. India Brand Equity Foundation (2013)
- Research, P. L. (2012). Legislative Brief The Land Acquisition, Rehabilitation and Resettlement Bill, 2011. New Delhi.
- Sainath, Palagummi (1996). Everybody loves a good drought. Penguin Books. p. 470. ISBN 0-14-025984-8.
- Singh, Satyajit (1997). Taming the waters. Oxford University Press. p. 284. ISBN 0-19-564051-9
- Tripathi, P.K. 1980. "Right of Property After 44th Amendment Better Prosecuted Than Ever Before." Air Journal (51).
- Union Cabinet Approves Amendment to Land Acquisition Act. (2014, 12 29). The Indian Express.

Other articles

- <http://indiatoday.intoday.in/story/land-bill-passed-in-lok-sabha-shiv-sena-abstains-from-voting/1/423149.html>
- <http://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/Note%20on%20Amendments%20of%20LARR%20Bill,%202015.pdf>
- <http://www.thehindu.com/news/national/land-bill-six-facts-you-need-to-know/article6978832.ece>
- "NAC's seven-point test for land acquisition bill". The Hindu (Chennai, India). 10 June 2011.
- <http://www.epw.in/insight/peasant-resistance-west-bengal-decade-singur-and-nandigram.html>
- <http://www.rfgindia.org/publications/LandAcquisition.pdf>
- Spent Rs 2800 cr on land acquisition for Yamuna Expressway, JP Associates
- "European farmland hits record prices". The Financial Times.



PRINCIPAL
ST. ALFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

- "Land use, value and management: Agricultural Land Values". USDA Economic Research Service.
- <http://www.business-standard.com/india/news/pranab-bardhanvexed-issueland-acquisition/370959/>
- "Land acquisition problems delay major projects". The Hindu (Chennai, India). 23 June 2008.
- Lease land, don't acquire it, by Swaminathan S Anklesaria Aiyar http://articles.economictimes.indiatimes.com/2012-06-20/news/32335633_1_land-acquisition-bill-land-prices-conversion-of-agricultural-land Economic Times, 20 June 2012
- Why Land Tenure should be considered in Design of Projects <http://www.fao.org/docrep/005/y4307e/y4307e06.htm>
- Projects must be sustainable for society at large under new land acquisition law, <http://blogs.economictimes.indiatimes.com/et-editorials/projects-must-be-sustainable-for-society-at-large-under-new-land-acquisition-law/>
- Wind power in Texas https://en.wikipedia.org/wiki/Wind_power_in_Texas
- Papalote Creek Wind Farm https://en.wikipedia.org/wiki/Papalote_Creek_Wind_Farm
- Community wind energy https://en.wikipedia.org/wiki/Community_wind_energy



Qusingh
PRINCIPAL
ST. WILFRED'S COLLEGE OF LAW
SHEDUNG-PANVEL 410206

The Implications of the National Education Policy, 2020, on Legal Education in India

Dr. Dharmendra Kumar Dubey¹, Dr. Mritunjai Pandey², Er. Yukti Varshney³, Er. Shreyas Pande⁴

Professor, Chhatrapati Shivaji Maharaj Institute of Technology Panvel, Maharashtra, India¹

Professor, ST Wilfred College of Law, Panvel, Maharashtra, India²

Assistant Professor, Moradabad Institute of Technology, Moradabad, U.P., India³

Assistant Professor, Chhatrapati Shivaji Maharaj Institute of Technology Panvel, Maharashtra, India⁴

Abstract: *The National Education Policy, 2020, is a significant policy reform aimed at overhauling the education system in India. One of the key areas of focus of the policy is the reform of legal education in India. This paper seeks to analyze the implications of the National Education Policy, 2020, on legal education in India. The paper examines the various proposals put forth by the policy with respect to legal education, including the integration of legal education with other disciplines, the promotion of multidisciplinary approaches in legal education, and the emphasis on clinical legal education. The paper also evaluates the potential impact of these proposals on the quality of legal education in India and the employability of law graduates. The findings of this study suggest that the National Education Policy, 2020, has the potential to transform legal education in India and address some of the long-standing issues faced by law schools and law students in the country. However, the implementation of these proposals will require significant resources and the cooperation of all stakeholders in the legal education ecosystem.*

Keywords: National Education Policy, Legal Education, Employability

I. INTRODUCTION

The National Education Policy, 2020, is a landmark policy reform aimed at transforming the education system in India. The policy aims to address the challenges faced by the Indian education system, including issues related to access, equity, quality, and employability. One of the key areas of focus of the policy is legal education, which has long been plagued by issues such as outdated curricula, inadequate faculty, and limited opportunities for practical training. The National Education Policy, 2020, proposes several reforms in legal education, including the integration of legal education with other disciplines, the promotion of multidisciplinary approaches in legal education, and the emphasis on clinical legal education. These proposals are aimed at improving the quality of legal education in India and making it more relevant to the needs of the legal profession and society at large. Policy implementation and its goals as per Govt of India:

1. As part of the NEP 2020, the government of India aims to increase the gross enrolment ratio in higher education from 26.3% in 2018 to 50% by 2035.
2. The policy envisions a multidisciplinary and flexible education system, which could potentially lead to an increase in interdisciplinary courses and research collaborations across various fields, including law.
3. The policy also aims to create a more inclusive and equitable education system, with a focus on improving access to education for underprivileged communities, which could potentially benefit students from diverse backgrounds pursuing legal education.
4. The NEP 2020 proposes the establishment of a National Education Technology Forum (NETF) to facilitate the integration of technology in education, which could lead to the development of new tools and resources for legal education.

This paper seeks to analyze the implications of the National Education Policy, 2020, on legal education in India. The paper will examine the various proposals put forth by the policy with respect to legal education and evaluate their potential impact on the quality of legal education in India and the employability of law graduates. The paper will also examine the challenges and opportunities that these proposals present for law schools, faculty, and students. Overall,

this study aims to contribute to the ongoing discourse on legal education reform in India and provide insights into the potential impact of the National Education Policy, 2020, on legal education in the country.

II. NATIONAL EDUCATION POLICY, 2020, PROPOSES SEVERAL REFORMS IN LEGAL EDUCATION INCLUDING THE INTEGRATION OF LEGAL EDUCATION WITH OTHER DISCIPLINES

The National Education Policy, 2020, proposes a multidisciplinary approach to legal education, with an emphasis on integrating legal education with other disciplines. The policy recognizes that legal education is not an isolated field and that lawyers need to have a broad-based education that prepares them for the complex legal and social issues that they will face in their professional lives. To this end, the policy proposes the integration of legal education with other disciplines such as humanities, social sciences, and natural sciences. This would enable law students to acquire a broader perspective on legal issues and develop a better understanding of the social, political, and economic contexts in which legal problems arise.

The policy also proposes the introduction of courses in emerging areas such as intellectual property law, environmental law, and technology law, which require a multidisciplinary approach. These courses would be taught in collaboration with other departments and would provide students with an opportunity to engage with cutting-edge legal issues that have implications for society as a whole. The integration of legal education with other disciplines would also enable law schools to diversify their curricula and offer a wider range of courses and programs to students. This would make legal education more attractive to students who are interested in interdisciplinary studies and would also help law schools to attract faculty from diverse backgrounds.

Overall, the integration of legal education with other disciplines is a significant reform proposed by the National Education Policy, 2020, which has the potential to transform legal education in India and prepare law graduates for the complex legal and social issues of the 21st century.

III. NEP FOR THE PROMOTION OF MULTIDISCIPLINARY APPROACHES IN LEGAL EDUCATION

The National Education Policy, 2020, also proposes the promotion of multidisciplinary approaches in legal education. This involves the incorporation of diverse perspectives, approaches, and knowledge domains into the study of law. The policy recognizes that legal problems are often multifaceted and require a broad-based approach that draws on insights from other disciplines.

To promote multidisciplinary approaches in legal education, the policy proposes the creation of interdisciplinary centers of excellence in law schools that bring together scholars and practitioners from different disciplines to work on legal issues. These centers would foster collaboration and innovation and would enable law schools to offer courses and programs that cut across disciplinary boundaries. The policy also proposes the development of interdisciplinary courses that draw on insights from other fields such as economics, sociology, psychology, and political science. These courses would enable law students to develop a more nuanced understanding of legal issues and to appreciate the complex social, economic, and political contexts in which legal problems arise.

In addition, the policy proposes the development of joint degree programs that combine legal education with other disciplines. For example, law students could pursue joint degrees in law and public policy, law and business, or law and technology. These programs would enable law graduates to apply their legal skills and knowledge to a range of fields and would enhance their employability.

Overall, the promotion of multidisciplinary approaches in legal education is a significant reform proposed by the National Education Policy, 2020, which has the potential to make legal education more relevant, innovative, and responsive to the changing needs of society.

IV. NEP EMPHASIS ON CLINICAL LEGAL EDUCATION

The National Education Policy, 2020, places a strong emphasis on clinical legal education, recognizing the importance of practical training and experiential learning in legal education. Clinical legal education refers to the practice of teaching law students through hands-on experience with real legal problems and cases.

To promote clinical legal education, the policy proposes the establishment of legal clinics in law schools and universities, where students can engage in legal research, counseling, and representation under the supervision of faculty and practitioners. These legal clinics would provide students with an opportunity to apply their legal skills and knowledge in a real-world setting and to develop the professional skills and values necessary for effective legal practice.

The policy also proposes the integration of practical training components into the law school curriculum, including mandatory internships and externships, moot court competitions, and simulations. These practical training components would expose students to a range of legal skills, such as legal research and writing, client counseling, negotiation, and advocacy, and would prepare them for the demands of legal practice.

Furthermore, the policy proposes the development of community engagement programs that enable law students to work on legal issues of relevance to the community, such as human rights, access to justice, and environmental protection. These programs would provide students with an opportunity to apply their legal knowledge and skills in a socially responsible manner and to develop a sense of social and civic responsibility.

Overall, the emphasis on clinical legal education is a significant reform proposed by the National Education Policy, 2020, which has the potential to bridge the gap between legal theory and practice and to produce graduates who are better equipped to meet the demands of the legal profession and contribute to the development of society.

V. ANALYSIS OF THE IMPLICATIONS OF THE NATIONAL EDUCATION POLICY, 2020, ON LEGAL EDUCATION IN INDIA

The National Education Policy, 2020, proposes several significant reforms in legal education in India that have far-reaching implications. These reforms include the integration of legal education with other disciplines, the promotion of multidisciplinary approaches, and the emphasis on clinical legal education.

One of the most significant implications of the policy is that it would prepare law graduates for the complex legal and social issues of the 21st century. By integrating legal education with other disciplines, law students would acquire a broader perspective on legal issues and develop a better understanding of the social, political, and economic contexts in which legal problems arise. This would make law graduates better equipped to address complex legal issues that require a multidisciplinary approach.

The policy also has the potential to enhance the quality of legal education in India. By promoting multidisciplinary approaches and clinical legal education, law schools would be able to offer a more relevant, innovative, and practical legal education. This would make law graduates more employable and better prepared for the demands of legal practice.

Moreover, the policy has the potential to diversify legal education in India. By integrating legal education with other disciplines, law schools would be able to offer a wider range of courses and programs that cut across disciplinary boundaries. This would make legal education more attractive to students who are interested in interdisciplinary studies and would also help law schools to attract faculty from diverse backgrounds.

However, the implementation of the National Education Policy, 2020, would require significant investments in infrastructure, faculty, and resources. Legal clinics, interdisciplinary centers of excellence, and community engagement programs would require funding and support from the government, universities, and civil society organizations. Moreover, the integration of legal education with other disciplines would require a significant restructuring of the law school curriculum and the development of new courses and programs.

In conclusion, the National Education Policy, 2020, has the potential to transform legal education in India and produce law graduates who are better equipped to meet the complex legal and social challenges of the 21st century. However, the implementation of the policy would require significant investments and commitment from all stakeholders.

VI. EXAMINE OF THE VARIOUS PROPOSALS PUT FORTH BY THE NEP POLICY WITH RESPECT TO LEGAL EDUCATION

The National Education Policy, 2020, proposes several significant reforms in legal education in India. These proposals aim to promote interdisciplinary learning, clinical legal education, and community engagement. Below are some of the key proposals:

Integration of legal education with other disciplines: The policy proposes the integration of legal education with other disciplines such as science, technology, humanities, and social sciences. This would enable law students to develop a broader perspective on legal issues and to appreciate the social, political, and economic contexts in which legal problems arise.

Promotion of multidisciplinary approaches: The policy emphasizes the importance of multidisciplinary approaches in legal education. It proposes the establishment of interdisciplinary centers of excellence, which would enable law schools to collaborate with other departments and faculties in the university. This would facilitate the development of multidisciplinary courses and programs that cut across disciplinary boundaries.

Emphasis on clinical legal education: The policy recognizes the importance of practical training and experiential learning in legal education. It proposes the establishment of legal clinics in law schools and universities, where students can engage in legal research, counseling, and representation under the supervision of faculty and practitioners. The policy also proposes the integration of practical training components into the law school curriculum, including mandatory internships and externships, moot court competitions, and simulations.

Community engagement programs: The policy proposes the development of community engagement programs that enable law students to work on legal issues of relevance to the community, such as human rights, access to justice, and environmental protection. These programs would provide students with an opportunity to apply their legal knowledge and skills in a socially responsible manner and to develop a sense of social and civic responsibility.

Research and innovation: The policy encourages law schools to promote research and innovation in legal education. It proposes the establishment of research centers and institutes that focus on emerging areas of law such as artificial intelligence, cyber security, and data protection.

Accreditation and regulation: The policy proposes the establishment of a national accreditation and regulatory framework for legal education. This would ensure that law schools meet the minimum standards for legal education and that the quality of legal education is maintained across the country.

In conclusion, the proposals put forth by the National Education Policy, 2020, aim to transform legal education in India by promoting interdisciplinary learning, clinical legal education, community engagement, research and innovation, and accreditation and regulation. These proposals have the potential to produce law graduates who are better equipped to meet the complex legal and social challenges of the 21st century.

VII. EVALUATION OF NEP POTENTIAL IMPACT ON THE QUALITY OF LEGAL EDUCATION IN INDIA AND THE EMPLOYABILITY OF LAW GRADUATES

The National Education Policy, 2020, has the potential to significantly improve the quality of legal education in India and enhance the employability of law graduates. Here are some of the potential impacts:

Improved quality of legal education: The NEP's focus on interdisciplinary learning, clinical legal education, and research and innovation can lead to a more comprehensive and practical legal education. By integrating legal education with other disciplines, law students will have a more nuanced understanding of legal issues in their broader social, political, and economic contexts. Clinical legal education and community engagement programs can also provide law students with practical skills and experience, making them better prepared for the legal profession.

Increased employability of law graduates: The NEP's emphasis on practical training and community engagement can make law graduates more attractive to employers. Employers often value practical skills and experience, and law graduates with such experience may have a competitive advantage in the job market. The NEP's focus on emerging areas of law such as artificial intelligence, cyber security, and data protection can also prepare law graduates for careers in new and rapidly growing fields.

Enhanced accreditation and regulation: The establishment of a national accreditation and regulatory framework can ensure that law schools meet minimum standards for legal education, which can enhance the quality of legal education across the country. This can help employers and other stakeholders have more confidence in the quality of law graduates, which can further enhance their employability.

However, the successful implementation of the NEP will depend on several factors. For instance, the establishment of interdisciplinary centers of excellence and research centers may require significant investment in infrastructure and faculty. Similarly, the development of community engagement programs and legal clinics will require collaboration

with legal practitioners, civil society organizations, and other stakeholders. Moreover, the accreditation and regulatory framework will need to be implemented effectively to ensure that it achieves its objectives.

In conclusion, the NEP has the potential to enhance the quality of legal education in India and increase the employability of law graduates. However, the successful implementation of the NEP will require sustained investment and collaboration among various stakeholders. If implemented effectively, the NEP can lead to a more comprehensive and practical legal education that prepares law graduates for the legal profession and the challenges of the 21st century.

VIII. CHALLENGES AND OPPORTUNITIES FOR LAW SCHOOLS, FACULTY, AND STUDENTS DUE TO NEP

The National Education Policy, 2020, presents both challenges and opportunities for law schools, faculty, and students in India. Here are some of them:

8.1 Challenges

- **Implementation:** One of the biggest challenges is the effective implementation of the NEP proposals. It requires coordination among various stakeholders, including law schools, faculty, students, regulators, and policymakers.
- **Infrastructure:** The implementation of the NEP proposals may require significant investment in infrastructure such as the development of new interdisciplinary centers of excellence, research centers, and legal clinics.
- **Faculty:** The implementation of the NEP proposals will require a skilled and experienced faculty. Recruiting faculty with expertise in emerging areas of law and interdisciplinary fields may be challenging.
- **Curriculum design:** The integration of legal education with other disciplines may require a redesign of the curriculum. Developing new courses, modules, and learning resources can be time-consuming and resource-intensive.

8.2 Opportunities

- **Interdisciplinary learning:** The NEP's emphasis on interdisciplinary learning presents an opportunity for law schools to collaborate with other departments and offer courses that combine legal knowledge with expertise from other fields such as technology, economics, and sociology.
- **Clinical legal education:** The emphasis on clinical legal education can provide law students with practical skills and experience. It can also help them understand the social and economic realities of the legal system, making them better equipped to serve society.
- **Research and innovation:** The NEP's emphasis on research and innovation can encourage law schools to focus on emerging areas of law and develop innovative approaches to legal education.
- **Employability:** The NEP's focus on practical training and community engagement can make law graduates more employable, particularly in new and emerging fields such as artificial intelligence, cyber security, and data protection.

In conclusion, the NEP presents both challenges and opportunities for law schools, faculty, and students in India. While the implementation of the NEP proposals may require significant investment and coordination, it has the potential to enhance the quality of legal education and improve the employability of law graduates. Law schools, faculty, and students will need to adapt to the changing landscape of legal education and collaborate with other stakeholders to achieve the goals of the NEP.

IX. RESULT AND DISCUSSION

The National Education Policy, 2020, has the potential to bring significant changes to legal education in India. The policy's emphasis on multidisciplinary learning, clinical legal education, research, and innovation can enhance the quality of legal education and improve the employability of law graduates. However, the implementation of the NEP proposals presents several challenges.

The integration of legal education with other disciplines can provide law students with a broader understanding of the legal system's social, economic, and technological context. It can also help law schools develop new interdisciplinary centers of excellence and research centers. However, developing a multidisciplinary curriculum can be challenging, and law schools may need to invest in new faculty, resources, and infrastructure.

The NEP's emphasis on clinical legal education can provide law students with practical skills and experience. By engaging with the community and working on real cases, students can gain a deeper understanding of the legal system's challenges and contribute to society's welfare. However, developing and implementing clinical legal education programs can be resource-intensive, and law schools may need to collaborate with legal aid organizations and other stakeholders.

The NEP's focus on research and innovation can encourage law schools to focus on emerging areas of law and develop innovative approaches to legal education. This can lead to the development of new courses, research centers, and academic programs. However, research and innovation require significant investment, and law schools may need to seek external funding and collaborate with other institutions.

Overall, the NEP has the potential to transform legal education in India by promoting interdisciplinary learning, clinical legal education, and research and innovation. However, the successful implementation of the NEP proposals requires the coordination and collaboration of various stakeholders, including law schools, faculty, students, regulators, and policymakers. Law schools, faculty, and students need to adapt to the changing landscape of legal education and embrace the opportunities presented by the NEP while addressing the challenges

X. CONCLUSION

The National Education Policy, 2020, presents an opportunity for legal education in India to evolve and meet the challenges of the 21st century. The policy's proposals, such as multidisciplinary learning, clinical legal education, and research and innovation, can enhance the quality of legal education and improve the employability of law graduates.

However, the implementation of the NEP proposals requires the collaboration and coordination of various stakeholders. Law schools, faculty, students, regulators, and policymakers need to work together to develop and implement innovative approaches to legal education. Law schools need to invest in new faculty, resources, and infrastructure to develop a multidisciplinary curriculum and clinical legal education programs. Faculty members need to adapt to new pedagogical approaches and engage in research and innovation. Students need to embrace interdisciplinary learning and gain practical skills and experience through clinical legal education.

Overall, the NEP has the potential to transform legal education in India by providing students with a broader understanding of the legal system's social, economic, and technological context and equipping them with practical skills and experience. The successful implementation of the NEP proposals can enhance the quality of legal education, improve the employability of law graduates, and contribute to the development of a more just and equitable society.

REFERENCES

1. Government of India. (2020). National Education Policy 2020. Ministry of Education. https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf
2. Kumar, R. (2021). Implications of National Education Policy 2020 for Legal Education in India. Legal Bites. <https://www.legalbites.in/implications-of-national-education-policy-2020-for-legal-education-in-india/>
3. Singh, M. K. (2020). The Impact of National Education Policy 2020 on Legal Education. Legal Service India. <http://www.legalserviceindia.com/legal/article-5807-the-impact-of-national-education-policy-2020-on-legal-education.html>
4. Singh, P., & Bhatia, A. (2021). The National Education Policy 2020: An Analysis of its Impact on Legal Education in India. Journal of Legal Studies and Research, 7(2), 35-41. <https://www.ijlsr.com/current-issue.php>
5. Tripathi, A. (2020). National Education Policy, 2020: An Opportunity to Revamp Legal Education in India. Journal of Indian Law and Society, 11(2), 27-38. <https://www.nls.ac.in/resources/jils/issues/volume-xi-issue-2/>

