

24

**STANDING COMMITTEE
ON URBAN AND RURAL
DEVELOPMENT**

(1995-96)

TENTH LOK SABHA

MINISTRY OF RURAL AREAS & EMPLOYMENT

“LAND ACQUISITION ACT, 1894”

TWENTY-FOURTH REPORT



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**LOK SABHA SECRETARIAT
NEW DELHI**

TWENTY-FOURTH REPORT STANDING COMMITTEE ON URBAN AND RURAL DEVELOPMENT (1995-96)

(TENTH LOK SABHA)

MINISTRY OF RURAL AREAS &
EMPLOYMENT

LAND ACQUISITION ACT, 1894

*[Action taken by the Government on the recommendations contained in the
Eighth Report of the Standing Committee on Urban & Rural Development
(10th Lok Sabha)]*



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LOK SABHA SECRETARIAT
NEW DELHI

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**STANDING COMMITTEE ON URBAN AND RURAL
DEVELOPMENT
(1995-96)**

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INTRODUCTION

1. the Chairman of the Standing Committee on Urban & Rural Development (1995-96) having been authorised by the Committee to submit the Report on their behalf, present this Twenty-Fourth Report on the action taken by Government on the recommendations contained in the Eighth Report of the Standing Committee on Urban & Rural Development (Tenth Lok Sabha) on "Land Acquisition Act, 1894" of the Ministry of Rural Areas & Employment.

2. The Eighth Report was presented to Lok Sabha on 15th December, 1994. Replies of the Government to all the recommendations contained in the Report were received on 27th March, 1995. The Committee took evidence of the officers of Ministry of Rural Areas & Employment on 16th January, 1996. The Committee considered and adopted this Report at their sitting held on 25th January, 1996.

3. An analysis of the action taken by Government on the recommendations contained in the Eighth Report (1995-96) of the Committee is given in Appendix II.

NEW DELHI;
February 7, 1996

Magha 18, 1917 (Saka)

PRATAPRAO B. BHOSALE,
Chairman,
Standing Committee on,
Urban and Rural Development.

CHAPTER I

REPORT

1. This Report of the Standing Committee on Urban & Rural Development (1994-95) deals with the action taken by the Government on the recommendations contained in their Eighth Report on Land Acquisition Act, 1894 (1994-95) of Ministry of Rural Areas & Employment which was presented to Lok Sabha on 15th December, 1994.

2. Action Taken notes have been received from Government in respect of all the 23 recommendations which have been categorised as follows:—

(i) Recommendations/Observations, that have been accepted by the Government:

Sl. Nos. 1.5, 1.31 to 1.33, 1.36, 1.39, 1.40, 1.41 & 1.49.

(ii) Recommendation/Observation which the Committee do not desire to pursue in view of Government's replies:

Sl. No. 1.9.

(iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee:

Sl. Nos. 1.6, 1.7, 1.14, 1.18, 1.20, 1.22, 1.23, 1.25, 1.38, 1.46 to 1.48.

(iv) Recommendation/Observation in respect of which final reply of Government is still awaited:

Sl. No. 1.50.

3. The Secretary, Ministry of Rural Areas & Employment during the evidence clarified various provisions of the Act with regard to the recommendations made by the Committee. He also acknowledged before the Committee that the Government would reconsider all the recommendations with utmost seriousness and would hold consultations with the State Governments. The Committee require that the observations made by the Committee in the report should be reconsidered by the Government and be apprised the action taken thereon expeditiously.

4. The Committee require that final replies in respect of the recommendations for which only interim replies have been given by the Government should be furnished to the Committee expeditiously.

5. The Committee will now deal with Action Taken by Government on some of the recommendations.

A. Reduction of the long gestation period for the completion of Land Acquisition proceedings

(Recommendations Para 1.5)

6. The Committee had recommended that the development in scientific and technological field, Government are in a position to have easy access to people living in remote areas. Moreover, due to the marked increase in Governmental responsibilities, there has been increasing decentralization of Governmental power at various levels which has resulted in a vast network of administrative set up throughout the country. There is no dearth of Chief Engineers, technocrats and bureaucrats required for carrying out the objectives of the Land Acquisition Act. In view of this scenario, the Committee feel that long gestation period must be slashed down to the minimum so as to reach the benefit of the Land Acquisition Act to the affected persons at the earliest as well as to relieve the Government from financial constraints.

7. The Government in their reply have stated that they agree with the Committee on the need for speedy and expeditious acquisition of land. However, the three year gestation period is not continuing since Independence or pre-Independence days. It was only recently in 1984 that the three year time limit for completion of the land acquisition proceedings was incorporated when the Act was comprehensively amended. In fact, before its amendment in 1984 the Land Acquisition Act laid down a three year time frame only for the publication of the declaration under Section 6 from the date of the publication of the notification under Section 4 (1). It did not prescribe any time limit for making of an award by the Collector with the result that the acquisition proceedings used to drag on for years together. Therefore, realising the need for speedy and expeditious acquisition of land, and overall time limit of three years for completion of the acquisition proceedings was incorporated in the Act by amendment in 1984 i.e. one year between the date of the publication of the notification under Section 4(1) and the date of the publication of the declaration under Section 6 and two years between the date of the publication of the declaration under Section 6 and the date of award by the Collector under Section 11. As per the provision under Section 11A if no award is made within this two years period, the entire proceedings for the acquisition of the land get lapsed.

The Ministry have further stated that the overall three year time frame laid down under the amended Act is actually an outer limit for completion of acquisition proceedings. The proceedings can be completed even earlier depending upon the size of the project. In fact, soon after the amendment of the Act in 1984 the State Government in January, 1985 were impressed upon by this Ministry to strictly adhere to the amended time-frame so as to avoid cost over-run and time overrun of the projects. In pursuance of this, the Government of Andhra Pradesh issued a circular letter dated 26.2.1985 prescribing a time schedule of 210 days or seven months for completing various stages of acquisition proceedings. A copy of this letter was circulated by this Ministry to the States and Union Territories for their guidance with the suggestion that appropriate time limits for various stages

of work and processes under Land acquisition proceedings be fixed so as to ensure completion of all formalities within the overall time frame laid down in the Act. Accordingly, a large number of State/UTs have fixed time limits for completion of various stages of acquisition proceedings.

It has also been stated that the overall three-year time limit which the Act prescribes after amendment in 1984 was incorporated after due consultations with the State Governments and is normally followed in ordinary acquisition cases. In urgency cases, the Act confers under Section 17, special powers on the 'appropriate Government' to take quick possession of land where the requirement of filing of objections by the persons interested in land and enquiry by the Collector is altogether eliminated. The law in such cases permits taking possession of land after 15 days from the publication of the notice under Section 9. In certain circumstances even immediate possession of land can be taken except in cases where any building is involved at least 48 hours' notice to the occupier is needed before taking possession. There is one more alternative for acquiring the land quickly by making use of the provision under Section 11(2) of the Act which cut-shorts the procedure of acquisition as well as the detailed exercise necessary for determining the amount of compensation. This provision which provides for the consent award was also inserted in the Act in 1984. It lays down that if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector, he may without making further enquiry make an award according to the terms of such agreement. Thus, this provision considerably curtails the procedure and helps taking possession of land expeditiously.

The Ministry have noted that the provisions of the Land Acquisition Act, 1894 are such that these can be successfully enforced to meet different kinds of situations and acquire land not only by adopting usual normal procedure but it provides even for quicker possession of land by resorting to either urgency provision or by entering into a negotiated award. The Standing Committee during oral evidence had suggested that the existing three years time limit should be reduced. Since 'land acquisition' is a subject of the State List and the fact that it is the State Governments who are actually enforcing the Act, it was considered necessary to consult the States in this regard. Accordingly, a meeting of the Revenue Secretaries and Directors, Land Acquisition, was convened on the 21st February, 1994 to discuss this and other relevant issues. However, after thorough deliberations on the subject, the meeting while recognising the need for expeditious acquisition of land, arrived at a consensus to the effect that the existing three years period being an outer limit should continue as it is under the Act but within this framework the limit may be reduced to two years from the date of the publication of the notification under Section 4(1) to the date of award by the Collector under Section 11 i.e., one year between the date of the publication of the notification under section 4(1) to the date of the publication of the declaration under Section 6 and

another one year between the date of publication of the declaration under Section 6 to the date of the award by the Collector under Section 11. The State Governments have been requested to issue administrative instructions to all concerned so that in all cases, the acquisition proceedings are completed well within the two years period. With the implementation of this decision it is expected that the acquisition proceedings would be completed at a much faster pace than hitherto i.e. within two years instead of three years as laid down under the Act. This would, however, entail deployment of special staff exclusively for the purpose of land acquisition work and adequate delegation of powers at various levels wherever not done.

8. The Committee note that the Government have agreed in principle the recommendation of the Committee to slash down the prescribed limit of three years for the completion of acquisition proceedings and have issued instructions to, all State Governments/UTs that the existing three years period being an outer limit should continue but within this framework the limit may be reduced to two years. The Committee feel that the Government should not be satisfied by only issuing such instructions to State Governments/UTs. Further, they note that a number of States/UTs had already fixed time for completion of various stages of acquisition proceedings as stated by the Ministry in the action taken notes. Andhra Pradesh has prescribed the time schedule of 210 days or 7 months for completing various stages of acquisition proceedings. Provisions have also been made in some other States as admitted by the Revenue Secretaries of different States during the course of oral evidence at the sitting of Committee held on 19.1.1994. The Committee apprehend that in spite of such instructions the acquisition proceedings would drag to 3 years as in every case it will be the practice to take shelter behind the outer limit of 3 years as per the statute. Hence the Committee would like to reiterate their earlier recommendation that the outer limit of 3 years should be slashed to the minimum especially in view of the fact that some States have already prescribed time schedule, i.e. less than one year period for completion of various stages of acquisition proceedings.

B. Inventories attached to land and New Guidelines for Judicious Compensation

(Recommendation Para Nos. 1.6 & 1.7)

9. The Committee had recommended that inventories attached to land are not being considered appropriately in the process of awarding compensations and in case of determining market rate of land, trees etc. it has been found that various State Governments are following different criterion for assessment. In the absence of clear-cut guidelines, the persons whose land is acquired by the Government are put to a great loss. The Committee strongly feel that certain new guidelines/provisions

relating to these aspects are required to be incorporated in the Act so that the affected persons may get judicious compensation and do not feel being victimised.

10. The Government in their reply have stated that the Land Acquisition Act, 1894 provides for payment of compensation for the acquisition of 'land' as defined in Section 3(a) which is as under:—

"Land includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth."

In determining the amount of compensation, the Collector is guided by the provisions contained in Sections 23 and 24 of the Act. While Section 24 deals with certain matters to be neglected, Section 23 besides providing for payment of additional amount per annum and solatium @ 12% and 30% respectively of the market value of the land, lists out the two matters to be taken into consideration while determining the amount compensation for the land to be acquired.

The Ministry have further stated that in addition to the market value of the land, additional amount and solatium, as admissible under the Act, the amount for damages is also payable for standing crops, trees etc. The Act, however, does not prescribe any procedure or method for determining the market value of the land. It is silent on this aspect. It has been left to the State Governments to do so who in turn have laid down guidelines in this regard according to which the market value is generally determined on the basis of a series of land transactions in a particular area during a specified period preceding the issue of the notification under Section 4(1). Government have also replied that it largely depend upon the local factors which not only vary from State to State but these even differ within the State and are location-specific. Similarly, in many cases, discretion is exercised by the Collector for determining the value of these assets even on case to case basis. For the evaluation of land and other assets like trees etc. The State Governments and U.T. Administrations have laid down necessary guidelines which are followed by the Collector in arriving at their value. Because of wide variation in the value which depends upon a number of local factors any Central guidelines or incorporation of any legal provision in the Act, to that effect would not be workable and meet the necessary requirements as it is not possible to enlist or visualise all the related factors and situations that contribute towards the assessment of the value of land, trees etc.

Government have also stated that issuing any Central guidelines for the purpose is not considered necessary.

While clarifying the provisions under the Act *ibid* the Secretary, Ministry of Rural Affairs & Employment during evidence stated:

"The next point is about market rate. In the Act, the expression used is "value". The term "market value" has not consciously been used because the "value" could be different from the "market value". Many times, the value could exceed market value and many times, it could be less than the market value. But while determining the value, the price which a similar land fetches in the same village or neighbouring village is always taken into account. There are detailed instructions given in the manuals of the State Governments how the value should be calculated and that is being used. If, in any State, the provisions in the manuals are considered to be unfair, then the courts can interpret it in their judgement and offer solution. Over a period of time some understanding has been arrived at how the value should be calculated. That is being used and where the interested persons are not satisfied with it, they are seeking redressal through the judicial system."

11. The Committee are disturbed to note that the Government interpreted the recommendation of the Committee for uniform criterion to assess the value of land as the market price of land. They are not satisfied with the reply furnished by the Government that Central guidelines to assess the value of land and assets attached to it is not justifiable as the value of land and assets varies from State to State and are location specific. No doubt the value of land and assets attached to it is location specific, yet the importance of uniform criterion to assess the value of land cannot be neglected. They feel that farmers do not get the due compensation for the improved varieties of fruits, crops and trees as a result of modern methodology and techniques of cultivation. The Committee also note that different formulae are adopted by different State Governments to arrive at the market value and in the absence of clearcut guidelines/provisions the persons whose land is acquired by the Government do not get the due compensation. Hence the Committee would like to reiterate their earlier recommendation in the light of the following observations:—

- (i) some of the States have laid down guidelines for the prescribed stamp duty village-wise and tehsil-wise on the sale deeds of property whereas there are no set guidelines in the case of acquisition of the same property. The Committee note that the persons affected by the acquisition get the compensation which is much lesser than the price which the similar land fetches if the property is sold to some private party.
- (ii) The formulae for calculation of average market value in case of land acquisition as adopted by different States is not justifiable. Such States/UTs calculate the average market value on the sale deeds of the same land of previous 3 to 5 years. The Committee note that the price of the land slashes down at once when the notification under section 4(1) is made and the public comes to know about the proposed acquisition. In such cases the average of the market value of land of the adjoining areas should be taken into consideration.

(iii) While calculating the average market value of the land the average of 3 to 5 years is taken from the year when the notification under Section 4(1) is made which is not justifiable. The Committee feel that the year should be considered from the year of possession.

The Committee also note that the rate of interest, i.e. 12% paid on the delayed payment is much lesser as compared to the present rate of interest charged by banks. They feel that the rate of interest should be increased from 12% to 18%.

(Recommendation Para No. 1.14)

C. Time period for Publication of Notifications

12. The Committee had recommended that the Act remained silent about the time period required under Section 4 and 5. Hence, the Committee would like to recommend that specific time period should be incorporated in Section 4 & 5 so as to avoid any kind of uncertainty and wastage of time. Keeping in mind the principle of natural justice i.e. right of reasonable opportunity of being heard, the Committee agree with the suggestions given by some of the Revenue Secretaries of State Governments that the affected persons must be provided with a clear one month time for filing objection in respect of acquisition of land by the Collector on behalf of Government. One month time must be counted from the date of receipt of the copy of the notification by the affected person.

13. The Government in their reply have stated that the Act does not provide for a time limit of 12 weeks or three months for completion of procedures under Sections 4, 5 and 5A(1). In fact this period was only tentatively worked out by this Ministry between the date of the publication of the preliminary notification under Section 4(1) and the date of publication of declaration under section 6 a time limit of one year has been prescribed under the Act during which all operations and statutory and procedural requirements are to be completed. This time limit gives necessary freedom to the land acquisition collector to complete all the requirements within the prescribed one year period. The recommendation of the Committee would not be workable between each and every stage of the proceedings or Sections because somehow due to some administrative or any unforeseen reason the time limit is not adhered to. Then, in that case the proceedings will be vitiated and the same will have to be started afresh which would not only result in the loss of time leading to the delay in the execution of the project for which the land is being acquired but it would also entail on un-necessary burden on the State exchequer. Therefore, it is neither considered necessary nor desirable or appropriate to lay down any specific time limit between Section 4 and 5. The Government in their reply have also stated that the Act already lays down thirty days period to be reckoned from the date of the publication of the notification under Section 4 (1) for filing of objections and linking one month time with the receipt of the copy of notification is possible only in case of small projects.

The Secretary during evidence while clarifying the provisions under Section 4(1) of the said Act stated:

"It is assumed that even if the person is not in the village somebody who is looking after his property will come to know of it, even if he is not given the power of attorney and things like that".

14. The Committee are not satisfied with the evasive reply put forth by the Government that the provision for specific time limit under sections 4 & 5 of the Act would not be workable and desirable. They are equally disturbed to note the contradictory facts given by the Government (action taken notes on recommendations at Para Nos. 1.4 & 1.5) that a large number of States/UTs have fixed time limit for completion of various stages of acquisition proceedings. The Committee would like to be informed about the specific time limit under Sections 4 & 5 in these large number of States/UTs. Further, they feel that the Government have not taken the recommendation of the Committee seriously and have tried to sidetrack the issue by putting ambiguous replies. The Committee would reiterate their earlier recommendation of incorporating specific time period in Sections 4 & 5.

Further on the recommendation of the Committee for provision of a clear one month time for filing objections from the date of the receipt of the copy of the notification, the Government have presented the excuses, *i.e.* in case of big projects which affected a number of persons, it would not be possible particularly because of staff constraints faced by State Governments. The Committee are dismayed to note the evasive replies furnished by the Government and feel that the personal notice is necessary as in certain cases the persons whose land is being acquired by Government is far away as in the case of the persons working in armed forces and the present provisions under the Act *i.e.* publication of notification in two daily local newspapers are not sufficient in such cases. As such they would reiterate their earlier recommendation and would also like to be apprised of the action taken by the Government in this regard.

D. Rewriting of Sections 6 to 8

(Recommendation Para No. 1.18)

15. The Committee had recommended that the sequence from Section 6 to 8 of the Land Acquisition Act should be rewritten. Firstly, the appropriate Government should declare its intention that the land is required for the public purpose. Thereafter, the Joint measurement work should be undertaken in order to avoid eventualities which might arise at this stage before proceeding to Section 7 of the Act which is reproduced as below:—

"Whenever, any land shall have been so declared to be needed for a public purpose, or for a Company, the appropriate Government, or some officer authorised by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of land."

16. The Ministry in their reply have stated that the acquisition proceedings under that the Act are initiated with the public action of preliminary notification under Section 4(1), survey, setting out of boundaries etc. of the land under Section 4(2), filing and hearing of objections under Section 5A, submission of the report to the Government and after Government's satisfaction about the need for acquisition of a particular land, publication of declaration of intended acquisition under Section 6, under Section 7, the Collector is required to take orders from the appropriate Government for acquisition of land and marking out and measurement of the land under Section 8 if not already done under Section 4(2). These estimates which may be tentative in nature are already available with the State Government/acquiring authorities and they execute the proposal only when they are satisfied with these details.

The Ministry have also replied that the matter was taken up in the Revenue Secretaries Conference held on the 21st February, 1994. It was agreed therein that subject to legal provisions, intact, Section 8 could be done after the publication of the notification under Section 4(1). Section 8, however, cannot be avoided specifically after Section 6 and therefore needs to be retained in the Act. In view of this there is no need of re-writing the sequence of these provisions.

17. Pursuant to the recommendation of the Committee with regard to the rewriting of the sequence of acquisition proceedings, in Sections 6 to 8 of the Act, the Government in the Action Taken Notes have clarified that Section 4(2) of the Act takes care of the position regarding the suitability, availability etc. of the land. They have further stated that the possibilities of the area being found less at the time of joint measurement under Section 8 is not even remote and as such there is no need of re-writing the sequence of these provisions. The above mentioned statement of the Government would tend to make Section 8 redundant. The Committee however, note another contradictory statement. It is stated that it was agreed at the Revenue Secretaries Conference held on 21st February, 1994 that subject to legal provisions intact, operation like marking out of land and measurement required under Section 8 could be done after the publication of the notification under Section 4(1) and Section 8 cannot be avoided significantly after Section 6 and therefore needs to be retained in the Act. The Committee take serious note of these contradictory facts. They feel that Section 8 has its significance only after Section 6 where under publication of declaration of intended acquisition is made and before proceeding to Section 7 whereby the Collector is directed to take order for the acquisition of land to take of the eventualities apprehended by the Committee in their earlier recommendation. The Committee observe that their recommendation has been well taken at the Revenue Secretaries Conference. They are, therefore, perturbed to note that the observation made at the said conference has not

been taken note of by the Government. They reiterate their earlier recommendation and would await the action taken by the Government in this regard.

E. Definition of term 'persons interested'

(Recommendation Para No. 1.20)

18. The Committee had recommended that the work 'persons interested' occurring in the various provisions of the Act is not very clear. This term requires to be made more specific and comprehensive. The Committee recommend that names/categories of the 'persons interested' should be clearly specified in the Definition clause of the Act itself by clearly mentioning the varied meaning of this term keeping in mind the requirements of the Act. This will help to eliminate bogus and uncalled for claims.

19. In their reply that the Government have stated that the expression 'person interested' has been defined in Section 3(b) of the Act as under:—

“the expression 'persons interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land”.

The expression 'person interested' is very comprehensive but it however does not profess to give an exhaustive definition. The expression has been interpreted by various courts. In *Gujarat Housing Board vs. Nagaji Bhai* (AIR 1986 Guj 81), the Gujarat High Court observed that the words 'persons interested' is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. In *Himalaya Tiles and Marble (P) Ltd. vs. Francis Victor Coutinho* (AIR 1980 SC 1118) the Supreme Court also *inter alia* made similar observations. The owner or the occupier of the land both are persons interested for the purposes of the Act. Section 10 of the Act specifies even other persons possessing any interest in land or any part thereof as co-proprietor sub-proprietor, mortgagee, tenant or otherwise. Person having interest in easement is also deemed to be interested in land. The Act, therefore, already specifies many of the categories of persons having interest in land. It is pertinent to mention here that in *Laxmanrao Kristrao Jahggirdar vs. Provincial Government of Bombay*, the Bombay High Court had *inter alia* observed that it is the duty of the Government officers to take proper care that enquiries are made to find out all the persons who are interested in the land which is sought to be acquired and in a proper case the mere fact that the name of a person interested did not appear in the record of rights may not be sufficient to entitle the Collector to make no other enquiry and to proceed with the acquisition without giving notice under Section 9(3) of the Land Acquisition Act, 1894. If a list of persons interested is given in the definition clause itself, as suggested by the

Committee, we shall be restricting its scope to the detriment of the interest of the person interested since it may not be possible to prepare an exhaustive list of such persons. It is just possible that a person whose nature of interest in land is not reflected in the definition but he has his interest in the land then in that case he will not be treated as a person interested and consequently he would not be entitled to claim any compensation in land despite the fact that his interest has been affected due to compulsory acquisition of land. Therefore, it is not considered necessary to redefine the expression as suggested by the Committee. Moreover, the definition as it stands today has been in existence since long and has withstood the judicial scrutiny and therefore no modification seems necessary.

20. On the recommendation of the Committee that names/categories of the 'persons interested' should be clearly specified in the definition clause of the Act, the Government have on the one hand stated that the position it stands today has been in existence since long and has withstood the judicial scrutiny and therefore need no modification and on the other hand different interpretations of 'persons interested' by different State High Courts have been given. The different interpretations given by respective State High Courts speak of the confusion created by the expression 'persons interested', as observed by the Committee in their earlier recommendation. The Committee are distressed to note the self contradictory facts placed before the Committee and would like the Ministry to explain the position unambiguously. The Committee reiterate their earlier recommendation and would await the action taken by the Government.

F. Provision for major Projects in Section 17

(Recommendation Para Nos. 1.22 & 1.23)

21. It had been observed by the Committee that sometimes mega-projects get delayed for want of only a small portion of land which hampers the timely implementation of the project resulting in cost escalation. The Committee recommend that in order to save public money engaged in these projects, suitable provision should be inserted under Sub-section (2) of Section 17 so as to include such major projects alongwith other exigencies for acquisition of land in cases of urgency.

Secondly, the Committee feel that in cases of urgent situations like war, flood, earthquake or any defence purpose, a provision should be inserted in Section 17 in order to empower the Government to take possession of land immediately without even completing the procedure upto Section 9(1) of the Act as is required under Sub-section (1) of section (17).

22. The Government in their reply have stated that Section 17 (2) already provides for immediately possession of land required for the purpose of railways, irrigation, water supply, drainage, road communica-

tion or electricity. It is not considered necessary to include some more exigencies or any project, mega or otherwise for that matter in Section 17(2) with a view to take immediate possession of land.

No doubt, war flood, earthquake and defence are the purposes for which possession of land may in certain cases be immediately needed but the provision contained in section 17(1) of the Act is adequate and meets the varied requirements. Even under Section 17(1) not much time is needed for taking possession of land. Moreover, it is not advisable to resort to emergency powers too frequently as it hurts the interest of the land holders because on invoking Section 17 the requirement of hearing of objections, enquiry etc. under Section 5A is completely eliminated and in case of Section 17(2) even the service of notice under Section 9(1) is dispensed with and the possession is taken immediately without giving sufficient time (only 48 hours' notice to the occupier where any building is involved in acquisition) to the land holder. Compulsory acquisition of land deprives the owner of his land involuntarily and in many cases this land may be the only source of his livelihood. In such cases particularly, parting with one's land is extremely painful. In the normal procedure at least he gets some opportunity to represent his case and object against the acquisition of his land but in urgency cases particularly under Section 17(2) not only this opportunity is lost but the land holder is not even given enough time to deliver the possession of his land.

In the Land Acquisition Conference held in July, 1989, it was emphasised that urgency provision should be resorted to only when it is absolutely unavoidable because it has the effect of curtailment of rights of representations or raising of objections by the affected land holders.

In view of the position explained above no modification seems necessary in the existing provision of Section 17(2).

The Secretary during evidence stated,

"Generally, the provisions are good enough and they have served the purpose. Now if we include some others which don't come under the category of urgency except where large investments are sought to be made it will create problems."

When the Committee was not satisfied with the arguments given by the Secretary he submitted before the Committee,

"If the Committee still feel that the recommendations should be accepted then we will see what should be done."

23. As regards inclusion of mega projects under emergency Section i.e. Section 17(2), the Committee observe that the Ministry have not taken the recommendation of the Committee seriously and have contended simply by stating that it is not necessary to include more exigen-

cies under Section 17(2). They had recommended inclusion of only those mega projects under Section 17(2) where these got delayed for want of only a small portion of land.

Further with regard to inclusion of certain urgent situation like war, flood, earthquake and defence, no doubt the Government have acknowledged their urgency but have simply explained that no modification seems necessary. The Committee take serious view of the way the Government have sidetracked their recommendations. They reiterate their recommendation and would await the action taken by the Government in this regard.

G. Defining the word "Appropriate Government"

(Recommendation Para No. 1.25)

24. The Committee observed that the word 'Appropriate Government' occurring in several sections of the Act has not specifically been defined. As a result of this ambiguity, the State Governments follow divergent rules for the completion of the process of Land Acquisition. The committee, therefore, recommended that the Government should immediately examine the adequacy of the term 'Appropriate Government' in depth and issue certain clear-cut guidelines to the State Governments with a view to bring about uniformity in the procedure which is being followed presently while acquiring land for public purpose.

25. In their reply, the Ministry stated that the expression 'Appropriate Government' has been explicitly defined in Section 3(ee) so as to mean in relation to acquisition of land for the purpose of the Union, the Central Government, and in relation to acquisition of land for any other purposes, the State Government. Under the Act, it is the 'Appropriate Government' who is empowered to acquire land. Therefore, all compulsory acquisition of land is carried out by the authority of the Government either by the Collector of a district/Deputy Commissioner or any officer specially appointed by the appropriate Government to perform the function of a Collector under the Act. There is no ambiguity in the definition of the 'Appropriate Government' as it has worked well and has stood the test of time. Though categorization of the authorities for approving the award is necessary yet to define each and every level of rank of the officers in the Act is neither considered necessary nor desirable because the law is generally enforced by the State Governments and even for the purpose of the Central projects the land is acquired by the State Governments. Therefore, it is necessary to have the required flexibility in the law so that it could be enforced by all the States and UTs without any difficulty.

The Secretary during evidence stated:

"As we understand the word 'Appropriate Government', there is no confusion on the use of this expression. No difficulty has arisen in this regard and no State has brought it to our notice. The word 'Appropriate Government' is being interpreted by the affected

persons, Government and officials without causing any problem. Therefore, we find that it is serving the purpose."

26. The Committee note that pursuant to the recommendation of the Committee to define the word 'Appropriate Government' the Government in the action taken reply have explained the relevant provisions of the Act and stated that the existing position has worked well and as such redefining the 'Appropriate Government' is not considered necessary. The Committee are not satisfied with the evasive reply of the Government they feel that in the absence of clear definition of 'Appropriate Government' different States are following divergent practice. They reiterate their earlier recommendation and would like that action taken in this regard should be placed before the Committee at the earliest.

H. Valuation & Granting of Compensation for Land

(Recommendation Para No. 1.38)

27. The Committee had recommended that there are some non-agricultural land which do not have any agricultural value but may have mineral resources with immense economic value underneath. The Committee observe that this factor is not taken into account while evaluating non-agricultural land for the purpose of granting compensation.

In order to provide judicious compensation to the land owner, the Committee would like to recommend that while evaluating land for the purpose of deciding compensation, the Acquisition Officer shall take into account all these factors. While evaluating all the above mentioned factors the concerned authority must consult Departments of Agriculture, Horticulture, Forest and Irrigation etc. Some uniform modalities, guidelines should also be issued by the Ministry of Rural development to the State Governments so that no area of compensation should be left unassessed. Any benefit which might accrue from those trees in subsequent years should also be taken into consideration.

28. In their reply the Government have stated that under the Act, compensation is paid for the 'land' as defined in Section 3(a) of the Act which includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. Trees are things attached to the earth and are included in the definition of land. However, as stated in the comments against paras 1.6 and 1.7 the Collector is guided by the provisions contained in Section 23 and 24 which provide for payment for damages sustained by taking of any standing crops, trees which may be on the land at the time of taking possession of land. Accordingly, the Collector, besides determining the market value of land, duly takes into account the value of the standing crops, trees etc. while assessing the amount of compensation and they also consult, wherever necessary, the concerned Technical Departments for arriving at the value of the assets which as stated earlier depends upon a number of local factors. Therefore because of the reasons given in the comments against

para 1.6 and 1.7 it would not be desirable to issue any guidelines in this regard by the Ministry.

As regards the value of minerals etc. it is reiterated that the compensation is paid for the land as defined in Section 3(a) and besides the market value of this land, solatium and 12% p.a. additional amount, the Collector is also required to taking into consideration as stated earlier, various other factors, which are enumerated in Section 23(1). Beyond these components, no other factors are considered necessary for being taken into account while assessing the amount of compensation.

29. With regard to the recommendation of the Committee to issue uniform guidelines to assess the value of agricultural assets/non-agricultural assets e.g. minerals etc. fastened to earth, the Government have reiterated the already known provisions Section 3(a), 23 & 24 of the Act and have stated that beyond these components, no other factors are considered necessary for being taken into account while assessing the amount of compensation. The Committee are not satisfied with the reply furnished by the Government and reiterate their earlier recommendation. They would await the action taken of the Government in this regard.

I. Definition of term 'Physical Possession'

(Recommendation Para Nos. 1.46, 1.47 & 1.48)

30. The Committee had recommended that the word 'physical possession' should be distinctly defined in Section 3 i.e. the definition clause of the Act, so as to avoid any ambiguity regarding the meaning of the term 'physical possession'.

The Committee also recommended that the following explanation should be added to Section 11A of the Land Acquisition Act:

Explanation:— Making of an award within that period by the Collector would mean and include the compliance of mandatory provision of Section 31 of this Act.

It was further recommended that Section 28 also be amended by adding "he took possession of the land or the award is made, whichever is earlier" in place of the words "he took possession of the land." Similarly, in proviso to the section 28 it is proposed that the words "on which possession is taken or award is made, whichever is earlier" should be substituted for the words "on which possession is taken."

31. The Government in their reply have stated that there is no need of defining the words 'physical possession' as there is no ambiguity in its interpretation and the word 'possession' occurring in Sections 16, 17, 23, 34 or elsewhere conveys clear intention. Similarly, the addition of another Explanation to Section 11A is also not considered necessary because when once the award has been made by the Collector under Section it is bound to make the payment of compensation under Section 31. If the proposed 'Explanation' is inserted and somewhere due to some unforeseen reason

compensation is not paid immediately on making the award, the proceedings are liable to lapse and it would not only unnecessary add to the burden on the State exchequer but it would also considerably delay the project. In fact that is the reason why the provision for payment of interest has been made in the Act for delayed payment.

32. The Ministry in the written replies have stated that there is no need of defining the word 'physical possession', adding the Explanation to Section 11A, or amending Section 28 as recommended by the Committee. The Committee are not satisfied with the arguments posed by the Ministry that making of an award by the Collector under Section 11, taking of possession of the land under Section 16 and payment of compensation of the land-owner under Section 31 are all done almost simultaneousness. The Committee had observed in their earlier recommendation that the real experience is something different. The physical possession is not taken by the Government even after 5 to 10 years of the completion of the acquisition procedure. Further it has been argued by the Ministry that the interest accrues only from the time of taking possession of land because till the possession is not taken, the land owner continues to enjoy the fruits from the land. So there is no question of paying interest for that period. The Committee are not convinced with the reasoning given by the Ministry as the interested party suffer losses of interest on the market value and further an account of devaluation of the value of rupee, as observed by the Committee earlier. The Committee hence reiterate their earlier recommendation and would like that the action taken by the Government in this regard, should be placed before the Committee.

J. Sanctioning Power of the Collector

Recommendation (Para No. 1.50)

33. The Committee had recommended that the sanctioning power of the Collector the Commissioner and the State Government in case of compensation should also be revised taking into account the increasing value of land and other properties attached to it. As regards the pecuniary limits to be decided by each of the authority the Committee recommended that limit of the sanctioning power of the collector should be raised upto Rs. 30 lakhs that of the Commissioner from Rs. 30 lakhs to Rs. 50 lakhs and in the case of the State Governments it should be above Rs. 50 lakhs.

34. In their reply the Government have stated as for fixing the pecuniary limits for approving the award it would be desirable to leave this matter with the State Governments. However, the Committee's recommendation will be forwarded to the State Governments for their consideration and appropriate action.

35. On the Committee's recommendation, although the Government have acknowledged the facts yet no concrete action has been initiated in this respect. However, it has been stated that the Committee's recommendation will be forwarded to State Government for their consideration and

appropriate action. The Committee would like that their recommendation should be forwarded to State Governments and they should be apprised about it accordingly.

CHAPTER II

RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation (Para No. 1.5)

Now-a-days with the development in scientific and technological field, Government are in a position to have easy access to people living in remote areas. Moreover, due to the marked increase in Governmental responsibilities, there has been increasing decentralization of Governmental power at various levels which has resulted in a vast network of administrative set up throughout the country. There is no dearth of Chief Engineers, technocrats and bureaucrats required for carrying out the objectives of the Act. In view of this scenario, the Committee feel that the long gestation period must be slashed down to the minimum so as to reach the benefit of the Land Acquisition Act to the affected persons at the earliest as well as to relieve the Government from financial constraints.

Reply of the Government

This Ministry agrees with the Committee on the need for speedy and expeditious acquisition of land. However, it may be pointed out here that the three year gestation period is not continuing since Independence or pre-Independence days. It was only recently in 1984 that the three year time limit for completion of the land acquisition proceedings was incorporated when the Act was comprehensively amended. In fact, before its amendment in 1984 the Land Acquisition Act laid down a three year time frame only for the publication of the declaration under Section 6 from the date of the publication of the notification under Section 4(1). It did not prescribe any time limit for making of an award by the Collector with the result that the acquisition proceedings used to drag on for years together. Therefore, realising the need for speedy and expeditious acquisition of land, an overall time limit of three years for completion of the acquisition proceedings was incorporated in the Act by amendment in 1984 *i.e.* one year between the date of the publication of the notification under Section 4(1) and the date of the publication of the declaration under Section 6 and two years between the date of the publication of the declaration under Section 6 and the date of award by the Collector under Section 11. As per the provision under Section 11A if no award is made within this two year period, the entire proceedings for the acquisition of the land get lapsed.

This over-all three year time frame laid down under the amended Act is actually an outer limit for completion of acquisition proceedings. The proceedings can be completed even earlier depending upon the size of the project. In fact, soon after the amendment of the Act in 1984 the State

Governments in January, 1985 were impressed upon by this Ministry to strictly adhere to the amended time-frame so as to avoid cost over-run and time over-run of the projects. In pursuance of this, the Government of Andhra Pradesh issued a circular letter dated 26.2.1985 prescribing a time schedule of 210 days or seven months for completing various stages of acquisition proceedings. A copy of this letter was circulated by this Ministry to the States and Union Territories for their guidance with the suggestion that appropriate time limits for various stages of work and processes under land acquisition proceedings be fixed so as to ensure completion of all formalities within the over-all time frame laid down in the Act. Accordingly, a large number of States/UTs have fixed time limits for completion of various stages of acquisition proceedings.

The over-all three-year time limit which the Act prescribes after amendment in 1984 was incorporated after due consultations with the State Governments and is normally followed in ordinary acquisition cases. In urgency cases, the Act confers under Section 17, special powers on the 'appropriate Government' to take quick possession of land where the requirement of filing of objections by the persons interested in land and enquiry by the Collector is altogether eliminated. The law in such cases permits taking possession of land after 15 days from the publication of the notice under Section 9. In certain circumstances even immediate possession of land can be taken except in cases where any building is involved at least 48 hours' notice to the occupier is needed before taking possession. There is one more alternative for acquiring the land quickly by making use of the provision under Section 11(2) of the Act which cut-shorts the procedure of acquisition as well as the detailed exercise necessary for determining the amount of compensation. This provision which provides for the consent award was also inserted in the Act in 1984. It lays down that if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector, he may without making further enquiry make an award according to the terms of such agreement. Thus this provision considerably curtails the procedure and helps taking possession of land expeditiously.

It would be seen from the above that the provisions of the L.A. Act, 1894 are such that these can be successfully enforced to meet different kinds of situations and acquire land not only by adopting usual normal procedure but it provides even for quicker possession of land by resorting to either urgency provision or by entering into a negotiated award. However, during the oral evidence also the Standing Committee had suggested that the existing three year time limit should be reduced. Since

'land acquisition' is a subject of the State List and the fact that it is the State Governments who are actually enforcing the Act, it was considered necessary to consult the States in this regard. Accordingly, a meeting of the Revenue Secretaries and Directors, Land Acquisition, was convened on the 21st February, 1994 to discuss this and other relevant issues. However, after thorough deliberations on the subject, the meeting, while recognising the need for expeditious acquisition of land, arrived at a consensus to the effect that the existing three year period being an outer limit should continue as it is under the Act but within this framework the limit may be reduced to two years from the date of the publication of the notification under Section 4(1) to the date of award by the Collector under Section 11 i.e. one year between the date of the publication of the notification under Section 4(1) to the date of the publication of the declaration under Section 6 and another one year between the date of publication of the declaration under Section 6 to the date of the award by the Collector under Section 11. The State Governments have been requested to issue administrative instructions to all concerned so that in all cases, the acquisition proceedings are completed well within the two year period. With the implementation of this decision it is expected that the acquisition proceedings would be completed at a much faster pace than hitherto i.e. within two years instead of three years as laid down under the Act. This would however, entail deployment of special staff exclusively for the purpose of land acquisition work and adequate delegation of powers at various levels wherever not done.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P.11015/3/93-LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 8 of Chapter I of the Report.]

Recommendation (Para No. 1.31)

The Committee are perturbed to note that there are many examples of undue delay due to unclear definition of 'appropriate Government'. Keeping in mind the enormous expansion of the State's role in promoting public welfare and economic development since independence, the need for acquisition of land for public purposes has become far numerous. In the opinion of the Committee the time limit between Section 6 and other subsequent provisions of the Act are so stretched for various reasons that it really affects the price of the land to be acquired by Government and hamper other developmental activities. By considering the actual procedure for the completion of land acquisition, the formula of three years average become absolutely obsolete. Therefore, the Committee would like to recommend that the time period for the completion of land acquisition procedure should be reduced from three years to two years by providing for only one year period from Section 6 to Section 11.

Reply of the Government

The definition of the expression 'appropriate Government' has already been discussed in the comments on the Committee's observations/recommendations made in para 1.25.

As for the need for the reduction of time limit from three years to two years for completing the acquisition proceedings under the Act, the Ministry has agreed to the recommendation and accordingly it has been decided to reduce within the existing framework of three years, the limit to two years through administrative instructions for completing the proceedings i.e. one year between the date of the publication of the notification under Section 4(1) to the date of the publication of the declaration under Section 6 and another one year between the date of the publication of the declaration under Section 6 to the date of award by the Collector under Section 11. The State Governments have been advised to do the needful accordingly. This issue has also been discussed in the comments on the recommendation made in para 1.4 and 1.5.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P.11015/3/93-LRD dated 27.03.1995]

Recommendation (Para No. 1.32)

The Committee also find that the date of publication of Notification is not very clear and specific. The practice shows that in some of the States the day the Collector puts his signature on the notification is considered as the date of publication of notification and in some other States, the date of publication in the Newspaper or in the official Gazette is considered as the date of publication of notification. Therefore, the Committee would like to recommend that uniform guidelines should be issued in this regard by the Government so as to strictly follow the proposed two years time limit for the completion of Land Acquisition Procedure.

Reply of the Government

Sections 4(1) and 6(2) of the Act provide for the publication of the notification/declaration in the official Gazette and in two daily newspapers besides causing public notice of the substance of the notification/declaration at convenient places. Both the Sections further lay down that the last of the dates of such publication and the giving of such public notice would be referred to as the date of the publication of the notification.

The provision amply clarifies that the last of the dates of the publication of both; the notification under Section 4(1) as well as the declaration under Section 6(2), shall be the date of the publication of notification or declaration as the case may be. Therefore, there is no need for issue of any guidelines in this regard. However, if there is any lapse on the part of the Government in determining the date of the publication of the notification/declaration and if such determination hurts the interest of any landholder it is always open for him to challenge it in the Court of law. As

for the observance of the proposed two year period it goes without saying that the two year time limit for completion of the acquisition proceedings shall be followed by the States from the last of the dates of the publication of the preliminary notification under Section 4(1) to the date of the award by the Collector under Section 11.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P.11015/3/93-LRD dated 27.03.1995]

Recommendation (Para No. 1.33)

It has also been noticed by the Committee that certain cases remain pending in the courts for a pretty long time. Consequently, the Government as well as the affected persons are deprived of timely benefits which might accrue to them by virtue of that land. The Committee, therefore, recommend that the Central Government should explore the possibilities of simplifying the judicial process for speedy decisions of the cases pending in different courts in the country under the Land Acquisition Act.

Reply of the Government

It is needless to say that judiciary is independent in its functioning and therefor any intervention or measure for expediting the decisions of the Court would not be possible. In fact, it is the parties, who are aggrieved by the Collector's award, actually approach the Court for redressal of their grievances. They are free to do so in the interest of justice. However, besides the principal Civil Court of original jurisdiction who is empowered to adjudicate the land acquisition cases, the appropriate Government is also authorised to appoint a special judicial officer within any specified local limits to perform functions of the Court under the Act [Sec. 3(d)]. The States are very much aware of this provision which can be made use of by them whenever they so feel necessary. This would help in the speedy disposal of cases at the level of lower courts.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P.11015/3/93-LRD dated 27.03.1995]

Recommendation (Para No. 1.36)

First of all the Committee would like to suggest that the word 'court' being used in Sec. 23 of the Act should be substituted by the word "Appropriate authority" so as to avoid different connotations by different persons.

Reply of the Government

Section 23 of the Act refers to the 'Court' as defined in Section 3(d) which means a principal Civil Court of original jurisdiction unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act.

The definition and the reference of the Court in Section 23 is quite clear and there is no question of interpreting different connotations by different

persons. In this connection Section 54 of the Act also needs to be referred to which speaks of High Court and Supreme Court which certainly do not fall within the definition of the expression 'Court' and have separate jurisdiction. Therefore to substitute the word 'Court' by the "Appropriate authority" is not considered necessary.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P.11015/3/93-LRD dated 27.03.1995]

Recommendation (Para Nos. 1.39 & 1.40)

It has been noticed by the Committee that while deciding the amount of compensation the average value of the sale deeds of 3 to 5 years preceding the preliminary notification under Sub-section (1) Section 4 of the Land Acquisition Act is taken into consideration by appropriate authorities. In this connection, the Committee would like to recommend that the increasing value of land during these years should also be taken into account while granting compensation.

At present, the Act nowhere defines "Maraket rate". In the absence of such a definition the various State Governments are following their own criterion for assessment of the land/trees both fruit bearing and non-fruit bearing. The persons whose land is acquired by the Government are put to a great loss.

During the evidence some of State Governments viz., Kerala, Karnataka and Orissa agreed with the opinion of the Committee that the Act is silent about the term market value. For the purposes of the Land Acquisition the term market rate does not simply mean the commercial activity carried on in a particular area but it is more than that. While assessing the value of land, trees and building etc. it is very essential that the rates prevailing in the adjoining areas should always be taken into consideration. For fruit bearing trees, their values/rates should be calculated on the basis of the prevailing rate obtaining at the main business trading centre. Similarly, the Committee are of the view that the best method of determining the market price of the plots of land under acquisition is to rely on instances of sale price of the same type of land in its vicinity as on the date of Section 4(1) notification. The next best method is to take into consideration the instances of sales of adjacent land sold shortly before and after the Notification. The potential value of the land should also be taken into consideration. In the absence of any such transaction of the property under acquisition, instances of sale of similar properties have to be collected, analysed and taken into consideration.

Reply of the Government

These issues have already been discussed in the comments against para 1.6 and 1.7. However it is reiterated that the Act neither defines the expression 'market value' nor prescribes any method or procedure for determining the market value of the land. It is silent on this aspect. However, as stated earlier, the State Governments have laid down

guidelines for determining such value according to which the market value is generally determined on the basis of a series of land transactions in a particular area during a specified period preceding the issue of the notification under Section 4(1).

It is not necessary that in all the cases the value is determined by the State Govts. on the basis of the land transactions taken place during 3 to 5 years preceding the notification under Section 4(1). This may be only one of the methods that is adopted by the States. In some cases the value is determined on the basis of sale in the vicinity at the time of publication of the notification under Section 4(1). If this price is somehow not adopted it is modified with adequate reasoning. In some cases the value is determined on the basis of the previous transactions within one year of the land similar to the land under acquisition. The main consideration, however, is the proximity of time and space *i.e.* transactions taking place on or around the date of notification under Section 4(1) or in recent past and closer to the land under acquisition. Therefore, whatever value increases is reflected in the transactions and is duly taken into account while determining the value of the land. In certain cases minimum land prices have been fixed for different categories or areas of land which facilitate determining the value of the land while still in some other cases the net annual income from the property is taken into consideration.

In view of the position stated above, no further action seems necessary.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development) OM No. P.11015/3/93-LRD dated 27.3.1995]

Recommendation (Para No. 1.41)

It has been provided under Section 23 clause (2) that "in addition to the market value of the land as above provided, the Court shall in every case award a sum of thirty per centum of solatium on such market value, in consideration of the compulsory nature of the acquisition".

In this connection, the Committee fail to understand that the provision for giving solatium is not applicable in those cases where a person voluntarily offers his land to the Govt. for acquisition. Since more and more land is required by the Government in order to meet the tasks of socio-economic development, the Committee would like to recommend that the provision under Section 23(2) should also be applicable in case of consent award as an incentive to the concerned person.

Reply of the Government

Section 11(2) empowers the Collector to make an award by agreement with the persons interested. In fact, whatever amount is agreed upon between the two parties is mentioned in the award but in the process of agreement, solatium @ 30% of the market value and additional amount @ 12% p.a. over and above the market value of land as admissible under

Section 23(2) and 23(1A) are duly included/taken into account while arriving at the amount of compensation. The Ministry has already advised the State Governments in this regard.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P. 11015/3/93-LRD dated 27.03.1995]

Recommendation (Para No. 1.49)

The Committee further feel that sometimes the situation arises where the giving of award and completion of physical possession of land get delayed because of the paucity of funds or lack of budgetary provisions. As a result, the Land Acquisition process lapses by the virtue of Section 11A. Hence, the Committee would like to recommend that special contingencies fund should be created for giving timely compensation to the affected persons.

Reply of the Government

The Ministry agrees with the Committee's recommendation. In fact this Ministry has already taken steps in this direction. In order that the compensation is paid to the affected persons on time, the States on the basis of the Consensus arrived at in the Land Acquisition Conference held in 1989, the States have been advised that acquisition proceedings should be initiated only after the entire estimated cost of acquisition has been deposited by the Requisitioning Department with the appropriate Government well in advance so that proceedings are not held up/lapsed for want of funds and no hardship is caused to the affected landholders. However, the Committee's recommendation will be forwarded to the States for creating special contingency funds for payment of compensation to the affected persons in time.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P. 11015/3/93-LRD dated 27.03.1995]

CHAPTER III

RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF GOVERNMENT'S REPLIES

Recommendation (Para No. 1.9)

The Committee are of the opinion that the very purpose of issuing notices to the affected person is to communicate the decision of acquiring authority to acquire his/her land for public purposes. The need of the hour is to provide such kind of mechanism through which the affected person can have easy access to notification. The Committee fully agree with the opinion of the Revenue Secretaries/Commissioners in this regard and therefore, recommend that a copy of the notification in English, Hindi and the concerned regional language should be affixed in the Tehsildar's office, Gram Panchayat's or Patwari's office in order to remove those complications which might arise due to inadequacy of means of communications, especially, in remote areas. The Committee further recommend that the affected person must also get a copy of the notification by a registered post.

Reply of the Government

The Act under Section 4 and 6 already provides for causing public notice of the substance of the notification at convenient places in the locality and service of notice under Section 45. However, the Ministry fully agrees with the Committee's recommendation and the same will be forwarded to the State Governments and U.T. Administrations for consideration and implementation through administrative instructions to all concerned. Instead of affixing notification in English, Hindi and regional language the States will be requested to affix notification or its substance in English, Hindi and/or in Regional language. Copy of notification by registered post may be sent wherever it is possible.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P. 11015/3/93—LRD dated 27.03.1995]

CHAPTER IV

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE

Recommendation (Para No. 1.6 & 1.7)

It has also been observed that Land Revenue Code is the basis for valuation of land, trees and the movable and immovable properties etc. attached to it. But these criterion/guidelines are very obsolete. There are certain inventories attached to land which are not being considered appropriately in the process of awarding compensation e.g. trees having timber value but are in pre-bearing stage, fruit bearing trees gardens which do not have any timber value etc. are not taken into account while deciding compensation. Moreover farmers have been using modern methods and techniques for cultivation, plantation etc. but they do not get judicious compensation due to old traditional method of evaluation of acquired land.

Similarly, in case of determining market rate of land, trees etc. it has been found that various State Governments are following different criterion for assessment. In the absence of clear-cut guidelines, the persons whose land is acquired by the Government are put to a great loss. The Committee strongly feel that certain new guidelines/provisions relating to these aspects are required to be incorporated in the Act so that the affected persons may get judicious compensation and do not feel being victimised.

Reply of the Government

The L.A. Act, 1894 provides for payment of compensation for the acquisition of 'land' as defined in Section 3(a) which is as under:—

“land includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.”

In determining the amount of compensation, the Collector is guided by the provisions contained in Sections 23 and 24 of the Act. While Section 24 deals with certain matters to be neglected, Section 23, besides providing for payment of additional amount per annum and solatium @ 12% and 30% respectively of the market value of the land, lists out the following matters to be taken into consideration while determining the amount of compensation for the land to be acquired:—

- (i) the market value of land at the date of the publication of the notification under Section 4(1);

- (ii) the damage sustained by the person interested at the time of taking possession of land by reason of the taking of any standing crops, trees, severing of such land from his other land, injuriously affecting his other movable or immovable property in any other manner or his earnings, where the person interested is compelled to change his residence/place of business, the reasonable expenses, if any, incidental to such change and the damgae *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of Collector's taking possession of the land.

It would be seen from the above that in addition to the market value of the land, additional amount and solatium, as admissible under the Act, the amount for damages is also payable for standing crops, trees etc. The Act, however, does not prescribe any procedure or method for determining the market value of the land. It is silent on this aspect. It has been left to the State Governments to do so who in turn have laid down guidelines in this regard according to which the market value is generally determined on the basis of a series of land transactions in a particular area during a specified period preceding the issue of the notification under Section 4(1). Similarly, the State Governments have also laid down norms for assessing the value of standing crops, trees etc. This aspect of the matter has been deliberately left to the States because the value of land, trees etc. largely depends upon the local factors which not only vary from State to State but these even differ within the State and are location-specific and as much in many cases discretion is exercised by the Collector for determining the value of these assets even on case to case basis. For evaluating land and other assets like trees etc. the State Governments and U.T. Administrations have laid down necessary guidelines which are followed by the Collector in arriving at their value. Because of wide variation in the value which depends upon a number of local factors any Central guidelines or incorporation of any legal provision in the Act to that effect would not be workable and meet the necessary requirements as it is not possible to enlist or visualise all the related factors and situations that contribute towards the assessment of the value of land, trees etc.

The issue concerning the need for formulating National Guidelines by the Central Government on the determination of the market value of the land, trees, buildings, and other assets was also considered at the Revenue Secretaries Conference held on 21.2.94 where the discussions revealed that the Act provides for reasonable compensation based on the market principles and the compensation so payable is determined with the help of the guidelines issued by the State Governments in this regard. These guidelines are justiciable. However, the value of land and other assets depends upon various factors which not only vary from

State to State but these even differ within the State and are location-specific and, therefore, the Conference felt that there is neither justification nor any need for issue of any National Guidelines by the Centre on the subject.

In view of the position explained above, issuing any Central guidelines for the purpose is not considered necessary.

[Ministry of Rural Arcas & Employment, (Deptt. of Rural Development) OM No. P. 11015/3/93—LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 11 of Chapter I of the Report.]

Recommendation (Para No. 1.14)

It has been noticed by the Committee that the Act remained silent about the time period required under Section 4 and 5. Hence, the Committee would like to recommend that specific time period should be incorporated in Section 4 & 5 so as to avoid any kind of uncertainty and wastage of time. Keeping in mind the principle of natural justice *i.e.* right of reasonable opportunity of being heard, the Committee agree with the suggestions given by some of the Revenue Secretaries of State Governments that the affected persons must be provided with a clear one month time for filing objection in respect of acquisition of land by the Collector on behalf of Government. One month time must be counted from the date of receipt of the copy of the notification by the affected person.

Reply of the Government

In regard to para 1.12 it is clarified that the Act as such does not provide for a time limit of 12 weeks or three months for completion of procedures under Sections 4, 5 and 5A(1). In fact this period was only tentatively worked out by this Ministry keeping in view the various operations required to be completed under these Sections including work relating to survey, enquiry, assessment of the extent of damage, payment to the affected land owners, filing of objections etc.

The Committee in its recommendation in para 1.14 desires that specific time period should be incorporated in Section 4 and 5 and the affected persons must be provided with a clear one month time from the date of the receipt of the copy of the notification by the affected persons for filing objection in respect of acquisition of land.

Between the date of the publication of the preliminary notification under Section 4(1) and the date of the publication of declaration under Section 6, a time limit of one year has been prescribed under the Act. During this one year period, all the operations and the statutory and procedural requirements *i.e.* the survey work, payment for damages, filing and hearing of objections, submission of the Report by the Collector with his recommendations and decision of the Government are to be completed.

This time limit gives the necessary freedom to the Land Acquisition Collector to complete all the requirements within the prescribed one year period. In case the time limit as suggested by the Committee is specified between Section 4 and 5 or for that matter between each and every stage of the proceedings or Sections it would not be workable because somehow due to some administrative or any unforeseen reason the time limit is not adhered to then in that case the proceedings will be vitiated and the same will have to be started afresh which would not only result in the loss of time leading to the delay in the execution of the project for which the land is being acquired but it would also entail an unnecessary burden on the State exchequer. Therefore, it is neither considered necessary nor desirable or appropriate to lay down any specific time limit between Section 4 and 5. The over-all time limit of one year prescribed between the two major stages of the proceedings to complete all the necessary requirements between Section 4 and 6 fully serves the purpose and there is no need to incorporate any further time limit in between these two small stages apart from what has already been provided in the Act.

As for providing one month's time to the objectors for filing the objections under Section 5A, it is stated that the Act already lays down thirty days period to be reckoned from the date of the publication of the notification under Section 4(1) for filing of objections. The Committee, however, desires that this one month time should be counted from the date of the receipt of the copy of the notification by the affected person. Linking one month time with the receipt of the copy of notification is possible only in case of small projects where the number of families to be affected by the acquisition of their land is not very large but in case of big projects affecting large number of persons it may not be always possible to implement this suggestion particularly because of shortage of staff which the State Govts. are generally facing.

In fact, earlier before the amendment of the Act in 1984, the law only provided for the publication of the preliminary notification under Section 4 in the Official Gazette and for public notice of the substance of the notification at convenient places in the locality. It was realised that the general public does not have easy access to Gazette notifications and since it was necessary that the public must know well in time about the acquisition of land in the locality, the provision was amended in 1984 so as to provide for the publication of the notification in two daily newspapers circulating in the locality and of these two newspapers at least one has to be in the regional language. This provision was made in addition to the provision for the publication in the official Gazette and causing public notice at convenient places. The idea behind the aforesaid amendment was to ensure wide publicity so that all the persons likely to be affected get fully aware of the proposed acquisition.

Moreover, Section 45 of the Act already provides for service of notice of the person concerned. If such person is not found, the notice is served on any adult male member of this family residing with him and if no such adult male member is available then the notice is served by fixing its copy on the outer door of the house in which the concerned person ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous places in the office of the officer or of the Collector or in the Court-house and also in some conspicuous part of the land to be acquired. Also if the Collector so directs a notice is sent by registered post to the concerned person.

Thus the law already provides enough safeguards in favour of the landowner and as such no further provision as suggested by the Committee is considered necessary.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P. 11015/3/93—LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 14 of Chapter I of the Report.]

Recommendation (Para No. 1.18)

At the time of joint measurement under Section 8, it may be possible in some cases that land may be found much less than what it was estimated at the time of preliminary notification. Similarly, if some physical or geological change takes place in that area or if it is found that the real owner of the land is somebody else, then in all these eventualities the entire land acquisition proceedings shall lapse and the acquiring authority will have to start the entire proceedings with a clean slate which will further result in enormous delay which in turn leads to cost escalation of the project and the project itself might lose its significance. In view of these eventualities, the Committee would like to recommend that the sequence from Section 6 to 8 of the Land Acquisition Act should be rewritten. Firstly, the appropriate Government should declare its intention that the land is required for the public purpose. Thereafter, the joint measurement work should be undertaken in order to avoid eventualities which might arise at this stage before proceeding to Section 7 of the Act which is reproduced as below:

“Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the appropriate Government, of some officer authorized by the appropriate Government, in this behalf, shall direct the Collector to take order for the acquisition of land.”

Reply of the Government

The acquisition proceedings under the Act are initiated with the publication of the preliminary notification under Section 4 (1), survey, setting out of boundaries etc. of the land under Section 4(2), filing and hearing of objections under Section 5A, submission of the report to the Government and after Government's satisfaction about the need for

acquisition of a particular land, publication of declaration of intended acquisition under Section 6, under section 7, the Collector is required to take orders from the appropriate Government for acquisition of land and marking out and measurement of the land under Section 8 if not already done under Section 4(2).

Before the proposal for acquisition of land is executed by the Government the requisitioning Department for whom the land is acquired makes its own assessment about the cost and other details including the actual requirement of land, suitability of the location or the area/locality where the project is proposed to be set up and whether the area of land required for the project is available in that locality. These estimates which may be tentative in nature are already available with the State Government/acquiring authorities and they execute the proposal only when they are satisfied about these details. While carrying out the preliminary investigations under Section 4(2) the position regarding the suitability and availability etc. of the land becomes quite clear to the concerned authorities and if the land is found suitable from the Project point of view then only they proceed further. Therefore, the possibility of the area being found much less at the time of joint measurement under Section 8 is not even remote. Also there is no question of entire proceedings getting lapsed because of the reason that the real owner of the land is some one else. The real owner is free to file his claim and that will be settled by the Collector under the provisions of the law. The wide publicity that is given at Section 4 (1) and 6 stages ensures that nobody concerned with the acquisition of land is left un-informed. However if any physical or geological changes, as pointed out by the Committee, take place then in that case also the proceedings will not lapse but these can be withdrawn under Section 48 if such changes render the establishment of the project impossible. In that event the compensation for damages suffered by the owner in consequence of the notice or of any proceedings thereunder is payable.

In this context it is also pertinent to mention here that in the Revenue Secretaries Conference held on the 21st Feb., 1994 the issue regarding the need for sequential changes was *inter alia* considered with particular reference to the provisions under Section 8. It was agreed therein that subject to legal provisions intact operations like marking out of land and measurement required under Section 8 could be done after the publication of the notification under Section 4(1). Section 8, however, cannot be avoided specifically after Section 6 and therefore needs to be retained in the Act.

In view of the position explained above there is no need of re-writing the sequence of these provisions.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development) OM No. P. 11015/3/93—LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 17 of Chapter I of the Report.]

Recommendation (Para No. 1.20)

At present, the word 'persons interested' occurring in the various provisions of the Act is not very clear. This term requires to be made more specific and comprehensive. The Committee recommend that names/categories of the 'persons interested' should be clearly specified in the definition clause of the Act itself by clearly mentioning the varied meaning of this term keeping in mind the requirements of the Act. This will help to eliminate bogus and uncalled for claims.

Reply of the Government

The expression 'person interested' has been defined in section 3(b) of the Act as under:—

"The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land".

The expression 'person interested' is very comprehensive but it however does not profess to give an exhaustive definition. The expression has been interpreted by various Courts. In *Gujarat Housing Board vs Nagaji bhai* (AIR 1986 Guj. 81), the Gujarat High Court observed that the words 'person interested' is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. In *Himalaya Tiles and Marble (P) Ltd. vs. Francis Victor Coutinho* (AIR 1980 SC 1118) the Supreme Court also *inter alia* made similar observations. The owner or the occupier of the land both are persons interested for the purposes of the Act. Section 10 of the Act specifies even other persons possessing any interest in land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise. Person having interest in easement is also deemed to be interested in land. The Act, therefore, already specifies many of the categories of persons having interest in land. It is pertinent to mention here that in *Laxmanrao Krishnao Jahggirdar vs Provincial Government of Bombay*, the Bombay High Court had *inter alia* observed that it is the duty of the Government officers to take proper care that enquiries are made to find out all the persons who are interested in the land which is sought to be acquired and in a proper case the mere fact that the name of a person interested did not appear in the record of rights

may not be sufficient to entitle the Collector to make no other enquiry and to proceed with the acquisition without giving notice under Section 9 (3) of the L.A. Act, 1894. If a list of persons interested is given in the definition clause itself, as suggested by the Committee, we shall be restricting its scope to the detriment of the interest of the person interested since it may not be possible to prepare an exhaustive list of such persons. It is just possible that a person whose nature of interest in land is not reflected in the definition but he has his interest in the land then in that case he will not be treated as a person interested and consequently he would not be entitled to claim any compensation in land despite the fact that his interest has been affected due to compulsory acquisition of land. Therefore, it is not considered necessary to redefine the expression as suggested by the Committee. Moreover, the definition as it stands today has been in existence since long and has withstood the judicial scrutiny and therefore no modification seems necessary.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM NO. P.11015/3/93-LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 20 of Chapter I of the Report.]

Recommendation (Para No. 1.22 & 1.23)

It has been observed by the Committee that sometimes mega-projects get delayed for want of only a small portion of land which hampers the timely implementation of the project resulting in cost escalation. The Committee recommend that in order to save public money engaged in these projects, suitable provision should be inserted under Sub-section (2) of Section 17 so as to include such major projects alongwith other exigencies for acquisition of land in cases of urgency.

Secondly, the Committee feel that in cases of urgent situations like war, flood, earthquake or any defence purpose, a provision should be inserted in Section 17 in order to empower the Government to take possession of land immediately without even completing the procedure upto Section 9 (1) of the Act as is required under Sub-section (1) of section (17).

Reply of the Government

Section 17(2) already provides for immediate possession of land required for the purposes of railways, irrigation, water supply, drainage, road communication or electricity. It is not considered necessary to include some more exigencies or any project, mega or otherwise for that matter in section 17(2) with a view to take immediate possession of land.

No doubt, war, flood, earthquake and defence are the purposes for which possession of land may in certain cases be immediately needed but the provision contained in section 17(1) of the Act is adequate and meets the varied requirements. Even under Section 17(1) not much time is needed for taking possession of land. Moreover, it is not advisable to

resort to emergency powers too frequently as it hurts the interest of the land holders because on invoking Section 17 the requirement of hearing of objections, enquiry etc. under Section 5 A is completely eliminated and in case of Section 17(2) even the service of notice under Section 9(1) is dispensed with and the possession is taken immediately without giving sufficient time (only 48 hours' notice to the occupier where any building is involved in acquisition) to the land holder. Compulsory acquisition of land deprives the owner of his land involuntarily and in many cases this land may be the only source of his livelihood. In such cases particularly, parting with one's land is extremely painful. In the normal procedure at least he gets some opportunity to represent his case and object against the acquisition of his land but in urgency cases particularly under Section 17(2) not only this opportunity is lost but the land holder is not even given enough time to deliver the possession of his land.

In the Land Acquisition Conference held in July, 1989, it was emphasised that urgency provision should be resorted to only when it is absolutely unavoidable because it has the effect of curtailment of rights of representations or raising of objections by the affected land holders.

In view of the position explained above no modification seems necessary in the existing provision of Section 17(2).

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P. 11015/3/93-LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 23 of Chapter I of the Report.]

Recommendation (Para No 1.25)

The Committee feel that the word 'appropriate Government' occurring in several Sections of the Act has not been specifically defined. Neither the particular level of officers nor the rank of the Minister has been defined in the Land Acquisition Act. As a result of this ambiguity, the State Governments follow divergent rules for the completion of the process of Land Acquisition. The Committee would, therefore, like to recommend that the Ministry of Rural Development should immediately examine the adequacy of the term 'appropriate Government' indepth and issue certain clear cut guidelines to the State Government with a view to bring about uniformity in the procedure which is being followed presently while acquiring land for public purpose.

Reply of the Government

The expression 'appropriate Government' has been explicitly defined in Section 3 (oc) so as to mean in relation to acquisition of land for the purposes of the Union, the Central Government, and in relation to acquisition of land for any other purposes, the State Government. Under the Act, it is the 'appropriate Government' who is empowered to acquire land. Therefore, all compulsory acquisition of land is carried out by the authority of the Government either by the Collector of a district/Deputy

Commissioner or any officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act. There is no ambiguity in the definition of the appropriate Government as it has worked well and has stood the test of time. Though categorisation of the authorities for approving the award is necessary yet to define each and every level nor rank of the officers in the Act is neither considered necessary nor desirable because the law is generally enforced by the State Governments and even for the purposes of the Central Projects the land is acquired by the State Governments. Therefore, it is necessary to have the required flexibility in the law so that it could be enforced by all the States and UTs without any difficulty.

The second proviso to Section 11 empowers in certain cases the Collector to make an award without seeking previous approval of any higher authority while the first proviso to this Section requires approval of the higher authority. In the first case, there is no delay since the Collector himself is empowered to make an award. However, in the second case there is some possibility of delay taking place in making an award as the approval has to be obtained from the competent authority but the State Governments and U.T. Administrations have fixed time limits for completion of various stages of acquisition proceedings which ensures the making of award on time. The States are now fully conscious of the time frame prescribed under the Act for completion of acquisition proceedings and they take necessary steps right from the initial stage so that the proceedings do not get lapsed for want of making of an award.

As for fixing the pecuniary limits for approving the award it would be desirable to leave this matter with the State Governments. However, the Committee's recommendation will be forwarded to the State Governments for their consideration and appropriate action.

[Ministry of Rural Areas & Employment (Deptt. of Rural Development)
OM No. P. 11015/3/93-LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 26 of Chapter I of the Report.]

Recommendation (Para No. 1.38)

It has also been observed by the Committee that there are some non-agricultural land which do not have any agricultural value but may have mineral resources with immense economic value underneath. The Committee observe that this factor is not taken into account while evaluating non-agricultural land for the purpose of granting compensation.

In order to provide judicious compensation to the land owner, the Committee would like to recommend that while evaluating land for the purpose of deciding compensation, the Acquisition Officer shall take into account all these factors. While evaluating all the above mentioned factors the concerned authority must consult Departments of Agricultural,

Horticulture, Forest and Irrigation etc. Some uniform modalities, guidelines should also be issued by the Ministry of Rural Development to the State Governments so that no area of compensation should be left unassessed. Any benefit which might accrue from those trees in subsequent years should also be taken into consideration.

Reply of the Government

Under the Act, compensation is paid for the 'land' as defined in Section 3(a) of the Act which includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. Trees are things attached to the earth and are thus included in the definition of land. However, as stated in the comments against paras 1.6 and 1.7 the Collector is guided by the provisions contained in Section 23 and 24 which provide for payment for damages sustained by taking of any standing crops, trees which may be on the land at the time of taking possession of land. Accordingly, the Collector, besides determining the market value of the land, duly takes into account the value of the standing crops, trees etc. while assessing the amount of compensation and they also consult, wherever necessary, the concerned Technical Departments for arriving at the value of the assets which as stated earlier depends upon a number of local factors. Therefore, because of the reasons given in the comments against para 1.6 and 1.7 it would not be desirable to issue any guidelines in this regard by the Ministry.

As regards the value of minerals etc. it is reiterated that the compensation is paid for the land as defined in Section 3(a) and besides the market value of this land, solatium and 12% p.a. additional amount, the Collector is also required to take into consideration as stated earlier, various other factors, which are enumerated in Section 23(1). Beyond these components, no other factors are considered necessary for being taken into account while assessing the amount of compensation.

[Ministry of Rural Areas & Employment (Deptt. of Rural Development)
OM No. P. 11015/3/93-LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 29 of Chapter I of the Report.]

Recommendation (Para No. 1.46 to 1.48)

In this connection first of all the Committee would like to recommend that the word 'physical possession' should be distinctly defined in Section 3 i.e. the definition clause of the Act, so as to avoid any ambiguity regarding the meaning of the term physical possession.

The Committee also recommend that the following explanation should be added to Section 11A of the Land Acquisition Act:

Explanation:— Making of an award within that period by the Collector would mean and include the compliance of mandatory provision of Section 31 of this Act.

It is further recommended that Section 28 also be amended by adding "he took possession of the land or the award is made, whichever is earlier" in place of the words "he took possession of the land". Similarly, in proviso to the Section 28 it is proposed that the words "on which possession is taken or award is made, whichever is earlier" should be substituted for the words "on which possession is taken".

Reply of the Government

In normal cases, making of an award by the Collector under Section 11, taking of possession of the land under Section 16 and payment of compensation to the land owner under Section 31 are all done almost simultaneously and if at all there is any time lag between these activities it is practically very little or negligible. However, in some exceptional cases possession may be delayed due to some administrative reasons or legal hurdles and if the compensation is not paid on or before taking possession of the land, the interest thereon is payable under Section 34 @ 9% p.a. for the first year and 15% p.a. for the period thereafter but this interest accrues only from the time of taking possession of land because till the possession is not taken, the land owner continues to enjoy the fruits from the land. So there is no question of paying any interest for that period during which the possession of land has remained with the owner. In urgency cases, however, 80% of the estimated amount of compensation is paid even before taking possession of land.

Further, since the acquisition proceedings are required to be completed strictly within a period of three years, the provision under Section 23(1A) for payment of additional amount 12% per annum on the market value has also been restricted to three years only *i.e.* from the date of the publication of the notification under Section 4(1) to the date of award of the Collector or the date of taking possession of the land whichever is earlier. This provision for payment of 12% additional amount per annum takes care of any escalation in land prices that takes place after the publication of the notification under Section 4(1).

As already stated above normally there is no delay in payment of compensation but even if there is any delay, the purpose of the amendment of the Act in 1984 is in no way defeated because the landholder as already stated above is entitled to the payment of interest for any delay that takes place in payment. Before the amendment of the Act the interest rate was only 6% p.a. but now after the amendment it has been considerably enhanced and kept at such a level so that the land

owner is adequately compensated for the loss that he is likely to suffer on account of delay in payment. Not even the banks are offering interest @ 15% p.a. on fixed deposits which presently revolves around only at 10% p.a. Therefore the payment of interest at higher rates adequately safeguards the interest of the landholder in the event of delay. It may also be clarified here that there is no time limit for payment of interest, it is payable from the date of taking possession of land till the compensation is paid or deposited. So long as the compensation is not paid or deposited the landowner continues to get interest on the amount of compensation. Therefore, the payment of interest at higher rates takes adequate care of the interest of the landholder whether he suffers the loss on account of delay, inflation or any such other reason. In fact interest at higher rate of 15% p.a. works as a penal interest and helps ensure that there is no undue delay in payment of compensation.

There is no need of defining the words 'physical possession' as there is no ambiguity in its interpretation and the word 'possession' occurring in Sections 16, 17, 23, 34 or elsewhere conveys clear intention. Similarly, the addition of another Explanation to Section 11A is also not considered necessary because when once the award has been made by the Collector under Section 11 he is bound to make the payment of compensation under Section 31. If the proposed 'Explanation' is inserted and somehow due to some unforeseen reason compensation is not paid immediately on making the award, the proceedings are liable to lapse and it would not only unnecessary add to the burden on the State exchequer but it would also considerably delay the project. In fact that is the reason why the provision for payment of interest has been made in the Act for delayed payment.

Section 28 provides for payment of interest on the excess amount of compensation awarded by the Court. This interest is payable from the date of taking possession of land till the excess amount is paid. In fact this provision in Section 28 has been made on the same analogy as that of Section 34 which has been discussed in the preceding paragraphs. If Section 28 is modified on the lines suggested by the Committee there would be inconsistency between Section 28 and 34 which would not be desirable and the persons whose interest would be affected as a consequence thereof may raise the matter in the Court.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P. 11015/3/93-LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 32 of Chapter I of the Report.]

CHAPTER V

RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLIES OF GOVERNMENT ARE STILL AWAITED

Recommendation (Para No 1.50)

Furthermore, the Committee would like to recommend that the sanctioning power of the Collector, the Commissioner and the State Government in case of compensation should also be revised taking into account the increasing value of land and other properties attached to it. As regards the pecuniary limits to be decided by each of the authorities, the Committee would like to recommend that the limit of the sanctioning power of the Collector should be raised upto Rs. 30 lakhs, that of the Commissioner from Rs. 30 lakhs to 50 lakhs and in the case of the State Government it should be above fifty lakhs.

Reply of the Government

The expression 'appropriate Government' has been explicitly defined in Section 3(cc) so as to mean in relation to acquisition of land for the purposes of the Union, the Central Government, and in relation to acquisition of land for any other purposes, the State Government. Under the Act, it is the 'appropriate Government' who is empowered to acquire land. Therefore, all compulsory acquisition of land is carried out by the authority of the Government either by the Collector of a district/Deputy Commissioner or any officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act. There is no ambiguity in the definition of the appropriate Government as it has worked well and has stood the test of time. Though categorisation of the authorities for approving the award is necessary yet to define each and every level or rank of the officers in the Act is neither considered necessary nor desirable because the law is generally enforced by the State Governments and even for the purposes of the Central Projects, the land is acquired by the State Governments. Therefore, it is necessary to have the required flexibility in the law so that it could be enforced by all the States and UTs without any difficulty.

The second proviso to section 11 empowers in certain cases the Collector to make an award without seeking previous approval of any higher authority while the first proviso to this Section requires approval of the higher authority. In the first case, there is no delay since the Collector himself is empowered to make an award. However, in the second case there is some possibility of delay taking place in making an award as the approval has to be obtained from the competent authority but the State

Governments and U.T. Administrations have fixed time limits for completion of various stages of acquisition proceedings which ensures the making of award on time. The States are now fully conscious of the time frame prescribed under the Act for completion of acquisition proceedings and they take necessary steps right from the initial stage so that the proceedings do not get lapsed for want of making of an award.

As for fixing the pecuniary limits for approving the award it would be desirable to leave this matter with the State Governments. However, the Committee's recommendation will be forwarded to the State Governments for their consideration and appropriate action.

[Ministry of Rural Areas & Employment, (Deptt. of Rural Development)
OM No. P. 11015/393-LRD dated 27.03.1995]

Comments of the Committee

[Please see Paragraph No. 35 of Chapter I of the Report.]

NEW DELHI;
February 7, 1996

Magha 18, 1917 (Saka)

PRATAPRAO B. BHOSALE.
Chairman,
Standing Committee on
Urban and Rural Development.

APPENDIX I

MINUTES OF THE 23RD SITTING OF THE COMMITTEE ON URBAN & RURAL DEVELOPMENT (1995-96) HELD ON 16TH JANUARY, 1996

The Committee sat from 1100 hrs. to 1310 hrs.

PRESENT

Shri Prataprao B. Bhosale—*Chairman*

MEMBERS

2. Shri P.P. Kaliaperumal
3. Shri Prabhulal Rawat
4. Shri Prithviraj D. Chavan
5. Shri Maruti Deoram Shelke
6. Shri Surendra Pal Pathak
7. Shri Rampal Singh
8. Shri Devi Bux Singh
9. Shri Karia Munda
10. Shri Girdhari Lal Bhargava
11. Shri Subrata Mukherjee
12. Mohd. Ali Ashraf Fatmi
13. Shri Dharmabhiksham
14. Shri Gulam Mohammad Khan
15. Shri Sobhanadreeswara Rao Vadde
16. Shri Shailendra Mahto
17. Shri Nilotpal Basu
18. Shri Ram Deo Bhandari
19. Choudhary Harmohan Singh
20. Smt. Meera Das
21. Shri B.K. Hariprasad
22. Shri Jagmohan
23. Prof. Vijay Kumar Malhotra
24. Shri Thennala Balakrishna Pillai
25. Shri V. Hanumantha Rao

SECRETARIAT

1. Smt. Roli Srivastava—*Joint Secretary*
2. Smt. Sudesh Luthra—*Assistant Director*

Representatives of the Ministry of Rural Areas & Employment

1. Shri Vinay Shankar—*Secretary*
2. Shri P.M. Das—*Joint Secretary (Land Reforms)*
3. Shri Sukumar Das—*Director (Land Reforms)*

2. At the outset, the Committee welcomed the Officers of Ministry of Rural Areas & Employment present at the sitting. Thereafter, the Chairman explained before the Committee that most of the recommendations contained in the Eighth Report of the Committee on 'Land Acquisition Act, 1894' have not been agreed to by the Government as could be seen from the Action Taken Replies furnished by the Ministry. The Secretary, Ministry of Rural Areas & Employment, further clarified various provisions of the Act with regard to the recommendations of the Committee. The Secretary also responded to the various queries raised by the members of the Committee. The verbatim record of the proceedings have been kept.

The Committee then adjourned.

**MINUTES OF THE 24TH SITTING OF THE COMMITTEE ON
URBAN & RURAL DEVELOPMENT (1995-96) HELD ON 25TH
JANUARY, 1996**

The Committee sat from 1300 hrs. to 1400 hrs.

PRESENT

Shri Prataprao B. Bhosale—Chairman

MEMBERS

2. Shri Prabhulal Rawat
3. Shri J. Chokka Rao
4. Shri Prithviraj D. Chavan
5. Shri K. M. Mathew
6. Shri P. R. Kumaramangalam
7. Shri Maruti Deoram Shelke
8. Shri Surendra Pal Pathak
9. Shri Girdhari Lal Bhargava
10. Shri Sukdev Paswan
11. Shri Dharmabhiksham
12. Shri N. Murugesan
13. Shri Gulam Mohammad Khan
14. Shri Nilotpal Basu
15. Shri Ram Deo Bhandari
16. Shri Shivprasad Chanpuria
17. Shri Sangh Priya Gautam
18. Prof. Vijay Kumar Malhotra
19. Shri Thennala Balkrishna Pillai

SECRETARIAT

1. Smt. Roli Srivastava—*Joint Secretary*
2. Shri G. R. Juneja—*Deputy Secretary*
3. Smt. Sudesh Luthra—*Assistant Director*

2. ♦ ♦ ♦ ♦ ♦ ♦

3. The Committee considered and adopted the draft action taken Report on the 8th Report of the Committee on 'Land Acquisition Act, 1894'. The Committee also authorised the Chairman to finalise the action taken Report and present the same to the Parliament.

The Committee then adjourned.

***Evidence proceedings relating to subject 'Land Records' kept Separately.**

APPENDIX II

(Vide Para 3 of Introduction)

Analysis of the Action Taken by Government on the recommendations contained in the Eighth Report of the Standing Committee on Urban & Rural Development (10th Lok Sabha).

I.	Total Number of Recommendations	23
II.	Recommendations that have been accepted by Government (Para Nos. 1.5, 1.31 to 1.33, 1.36, 1.39, 1.40, 1.41 and 1.49) Percentage to total	9 39.2
III.	Recommendations which the Committee do not desire to pursue in view of the Government's replies (Para No. 1.9) Percentage to total	1 4.3
IV.	Recommendation in respect of which replies of Government have not been accepted by the Committee (Para Nos. 1.6, 1.7, 1.14, 1.18, 1.20, 1.22, 1.23, 1.25, 1.38, 1.46 to 1.48) Percentage to total	12 52.2
V.	Recommendation in respect of which final replies of Government are still awaited (Para No. 1.50) Percentage to total	1 4.3