

DISPLACEMENT DUE TO LAND ACQUISITION FOR “DEVELOPMENT” PROJECTS IN INDIA:

The Problems with the Existing Legislation and Policy

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“Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.”

- John Rawls²

“If you are to suffer, you should suffer in the interest of the country.”

- Jawaharlal Nehru³

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² John Rawls, A Theory of Justice, (Harvard University Press, USA), 1971, p3

³ Speaking to villagers who were to be displaced by the Hirakud Dam in 1948.

1. Introduction:

Throughout the history of mankind, societies have tried to balance between Individual Rights and Power of State. While my own political ideology was struggling between “is” and “ought” of the situations, one fine day, my family received a notice that the road adjoining our house needs to be widened and we are required to give away a portion of our yard to the Government.

I felt pained at the thought of giving away my land without much say in the decision making process. The helplessness persisted in spite of my legal education and urban background, and I yearned that John Locke be right in crowning Right to Property as a natural right, unlike the provisions of the Constitution of India.⁴

With the increasing pressures on land due to urbanization, rapid economic development, increasing infrastructure requirements etc., especially in a fast growing economy like India, the acquisition of land by the Government has increased. My “sacrifice” of a portion of my land is negligible compared to hundreds of villages acquired by the Indian government under doctrine of “Eminent Domain” for Greater Good and “development” purposes, as a result of which, millions of people become displaced from their homes.⁵ The fear of losing my yard under unfair terms thus opened my eyes to the neglected problems with the laws pertaining to compulsory acquisition and resultant displacement due to the development projects in India.

⁴ See later discussion on the deletion of Right to Property as a Fundamental Right from the Constitution of India.

⁵ According to available reports, more than 21 million people have been displaced due to development projects in India. See the report on India by Internal Displacement Monitoring Centre of U.N. Office of High Commissioner on Human Rights at <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/IDMC2India40.pdf>, last visited on 11/11/2008

2.Development induced Displacement: Meaning and implications

The doctrine of eminent domain is itself contested⁶, as it raises the classic debate of *power of state versus individual rights*. Development-induced displacement can be defined as *the forcing of communities and individuals out of their homes, often also their homelands, for the purposes of economic development*.⁷ At the international level, it is viewed as a violation of human rights.⁸

In India, there are a rising number of protests against compulsory acquisition of land for construction of manufacturing units such as Tata's Nano car in Singur, in which 997 acres of agricultural land was acquired to set up a factory for one of the cheapest cars in Asia, (the project was subsequently shifted to Gujarat) or for developing Special Economic Zone such as Nandigram or construction of large dams like Sardar Sarovar Dam on the river Narmada, which led to a cancellation of grant by World Bank due to protests under the argument that the tribal population was getting displaced under unfair conditions.

The effects of displacement spill over to generations in many ways, such as loss of traditional means of employment, change of environment, disrupted community life and relationships, marginalization, a profound psychological trauma and more. Such consequences lead to the requirement of legislations that address not only the issue of compensation, but also of resettlement, rehabilitation and participation in negotiation.

In India, different cases find independent solutions (mostly in the Courts of law through Public Interest Litigation), but the underlying problems remain with the

⁶ See for example Dana, David A, *Reframing Eminent Domain: Unsupported Advocacy, Ambiguous Economics, and the Case for a New Public Use Test*, 32 Vt. L. Rev. 129 to see a critical analysis of this doctrine in USA Supreme Court decision in *Kelo v City of New London*.

⁷ Pablo Bose, *Development Induced Displacement and Participation*, at <http://www.yorku.ca/crs/EDID/EDID%20Documents/EDID%20WP%202.pdf>

⁸ See, <http://www2.ohchr.org>,

existing laws regarding land acquisition and rehabilitation policy. The purpose of this essay is to bring out certain key lacunae in the existing legislation and policy and suggest alternatives regarding displacement due to large projects in India.

3. The Issues at a Glance:

The only legislation pertaining to land acquisition currently in place is the Land Acquisition Act, 1894 (“The Act”) which, though amended several times retains its colonial flavor by granting an unfettered powers to the Government. It is time the legislators test it against the needs of the society of a democratic India of today.

According to me, the following are a **few major issues** that need to be addressed:

1) Required changes in the legislation:

- Too wide a definition of “Public Purpose”
- Uncertainty in rehabilitation caused by case-by-case approach
- Arbitrary and only monetary compensation
- No provision for compulsory Social Impact Assessment
- Non-recognition of indigenous rights.

2) Need for participation by the people affected in the process,

3) Larger issues of Governance such as a lack of political will and a Utilitarian mindset.

4. The Legal Analysis and Strategy:

The **first set of issues** can be addressed by a clear legislation or policy which lays down the basic obligations of the Government towards the rehabilitation of displaced persons.

Under Section-4 of the Act, the Government is required to make a public notification of the intention to take over the land for a “public purpose”, the definition of which under Section-3(f) is *inclusive*, and is often interpreted very liberally to include a variety of uses such as housing schemes, roads, play grounds, offices and factories, benefiting only a portion of the society by the Collector and State Government taking advantage of the wide definition.⁹ In fact, the Supreme Court in various cases has laid down that not only is “Public Purpose” hard to define, the Government is the best judge to decide whether a purpose falls under this definition.¹⁰ Under the existing legislation, even private corporations are granted the right to acquire land under certain sections¹¹.

The current Indian legal framework assumes the displaced person to be a “willing-seller” of his land by granting only monetary compensation, and fails to address the short term and long term effects. As a cost-benefit analysis would show, the persons who get displaced belong to the poorest sections and many-a-times tribal population, who feel helpless at the thought of having to deal with Government and make their voice heard¹². The current legislation ignores stakeholders other than land owner and tenant. The Act allows village common

⁹ Recently, the Supreme Court has taken up the issue of testing the Constitutional validity of the definition of “Public Purpose”. See Tannu Sharma, *Public Purpose in Land Acquisition Act under SC Scrutiny*, (Indian Express, 11 May 2007) available at <http://www.indianexpress.com/news/Public-purpose-in-Land-Acquisition-Act-under-SC-scrutiny/31142/> last visited on 11/11/2008

¹⁰ See for example, the case of *State of Bombay v. R. S. Nanji*, as referred to in Rao, Sanjeeva, *Law of Land Acquisition and Compensation*, (New Delhi: Butterworths, 2001), p 65

¹¹ This is proposed to be changed by the Land Acquisition Amendment Bill, 2007, which is still under consideration.

¹² For a criticism of the Cost-Benefit method see Ravi Kanbur, *Development Economics and the Compensation Principle*, (Cornell University Working Papers).

property like wells, grazing lands to be acquired. The persons, who are indirect beneficiaries by way of traditional rights, are not recognized under the Act.¹³

It needs no reiteration that the methods of fixing even the monetary compensation through the averaging of sale deed prices is unfair even as a starting point because of the systematic undervaluation of the deed price due to stamp duty and income-tax.¹⁴ Sections 23 and 24 of the Act do not allow for compensation based on the increase in value from the use on acquisition.

The subsequent rise in price in adjacent lands is also unaccounted for, and as an alternative, sharing the benefit with the owners of land acquired can also be considered. Another suggestion is, distributing compensation as shares or debentures in case a company has been established. “One method to bring about a more competitive market situation could be the somewhat idealistic one to select three or four alternative big chunks of farm areas and to help formation of farmers groups in them and then encourage their bargaining.”¹⁵ This would increase the competition between the areas. The World Commission on Dams and the World Bank have also stressed on giving “land for land” as a compensation option.¹⁶

The compensation is determined by the Collector, and for any objections under Section-5 and Section-9 of the Act, the Collector and Government act as the Quasi-Adjudicatory Body, and the suits to a civil court are specifically barred. As a result, even the monetary compensation is not fairly calculated. Hence, there is a need for an independent judicial body to review the amount of compensation calculated and hear the objections.

¹³ See **Appendix – I** for statistics regarding percentage of Tribal population displaced in large scale dams

¹⁴ *Special Article: Land Acquisition in India*, (The Statesman India, January 20, 2007)

¹⁵ Supra Note 14

¹⁶ See Harsh Mandar, Ravi Hemadri and ors, *Dams, Displacement, Policy and Law in India*, Contributing paper to World Commission on dams, available at <http://www.dams.org>, p 22.

There is a need for compulsory Social Impact Assessment, ensuring that the subsequent problems of loss of employment, social surroundings and emotional trauma are accounted for¹⁷. The existing case-by-case approach provides huge leeway to the Government to avoid looking into detailed problems and a case before the Courts leads to delays. All this in turn creates a sense of uncertainty and helplessness in the minds of affected people.

These feelings of victimization and helplessness can be addressed by encouraging greater participation in collective decision-making. The **second issue**, therefore, is a lack of participation by the original land owners. Though there has been an initiative to bring about an amending Act to the Land Acquisition Act, the Community role is still underplayed¹⁸. To solve this problem, the unique system of Panchayat Raj (Village self-governance), a Gandhian legacy incorporated in the Part-IX of the Constitution of India can be utilized to form a platform where the affected people can voice their opinions and grievances within their comfort-zone, and at the same time, form an interest group that cannot go unheard. The power to empower the Panchayats, however, rests with the State and Central Governments.

The passing of legislation and ensuring efficacy of negotiations ultimately depend on the Political Will, which is the **third issue**.

The Utilitarian mindset is clear from the statement of Jawaharlal Nehru cited at the beginning of this essay. It is relevant to bring in the constitutional provisions while dealing with the broader issue of Governance. Though theorists such as John Locke proclaimed right to property as a “natural right”, which even a social contract cannot do away with, the Constitution of India does not recognize it as a

¹⁷ Ibid at p 5.

¹⁸ For an analysis of participation in development induced displacement, see Pablo Bose, Nicholas Garside and Richard Oddie, *The Ethics of Development-Induced Displacement Project*, Working Paper Series #2: The Politics of Participation, Center for Refugee Studies, (York: University of York, December 2003)

“Fundamental” and justiciable right. The Article -19(f) has been categorically deleted.

After independence, the constitutional interpretation took a socialistic turn.¹⁹ Parliament added the Ninth Schedule to the Constitution through the very first amendment in 1951 as a means of immunizing certain laws against judicial review. Under the provisions of Article 31, which themselves were amended several times later, laws placed in the Ninth Schedule pertaining to acquisition of private property and compensation payable for such acquisition cannot be challenged in a court of law on the ground that they violated the fundamental rights of citizens²⁰.

It must, however, be noted that a lack of rehabilitation policy violates Right to Life under Article 21 and Right to Equality under Article 14 (interpreted as right against arbitrariness)²¹ of the Constitution of India.²²

Bills such as Rehabilitation and Resettlement Bill, 2002 and Land Acquisition (Amendment) Bill, 2007 are being considered by the Parliament and various Committees now²³. The effort which incorporated obligation towards a social impact assessment failed due to a lack of political will. The prevailing Utilitarian mindset needs to be changed with the understanding that in a highly populated country such as India, *even the “minority” constitutes a great number in itself*. The Rawlsean argument of inviolability of certain rights goes against the Socialist

¹⁹ The Socialist goals of the Constitution are depicted in the Directive Principles of State Policy, which are mere recommendations to the Parliament to enact laws on. In the context of land acquisition, see Article 39 (b) and (c) of the Constitution of India.

²⁰ See Schedule IX to the Constitution of India

²¹ See *E.P. Royappa v State of Tamil Nadu* (1974) 4 SCC 3 at page 38 wherein Bhagwati, J, speaking for Chandrachud and Krishna Iyer, JJ propounded a new approach to Article 14 (Right to Equality) in the following words: “From a positivistic point of view, equality is antithetic to arbitrariness... When an act is arbitrary, it is implicit that it is unequal both according to political logic and constitutional law, and is therefore violative of Article 14.”

²² The landmark case of *Maneka Gandhi v Union of India* AIR 1978 SC 597 and the subsequent cases have interpreted the Right to life to include a life more than mere animal existence and includes right to education, right to safe and healthy environment and a ‘good quality of life’.

²³ For analysis of the loopholes in the amendments, see the review by Asian Center for Human Rights at <http://www.achrweb.org/Review/2007/163-07.htm>, as visited on 11/1/2009

ideals possessed by the Indian political leaders, such as Nehru, who viewed large-scale development projects to be “temples of modern India”. The displacement of the underprivileged few for construction of large-scale development projects clearly falls as “Unjust” in Rawlsean terms.²⁴

Perhaps a stronger international dialogue on Internal Displacement as a violation of Human Right will create a greater political will at the domestic front. The concerns for implementation of U.N. Guiding Principles on Internal Displacement²⁵, which recommend minimization of displacement and securing proper rehabilitation and participation, need to be addressed.

5. Rethinking “Development”:

While referring to the acquisition of land for “development” purposes, it is important to understand what constitutes “development” itself. Since last few decades, development has been looked at as something beyond a “mere growth in GDP”, that is, an over all Human Development. The Human Development Reports look at “Development” as “increasing people’s choices”²⁶. There have also been theorized certain basic needs or basic capabilities that all people are entitled to, for a society to ensure true development. If this be so, it is essential that the laws of a democratic country ensure that due to acquisition of land for the growth of few, the displaced persons are not made worse-off.

²⁴ For a detailed analysis on how displacement is “Unjust” in Rawlsean terms, *see* Jay Drydyk, Development-Induced Displacement and John Rawls’s “General Conception” of Justice, Project Report for Ethical Studies, Department of Philosophy, (Carleton University, 1999)

²⁵ U.N. Document E/CN.4/1998/53/Add.2, dated 11 February 1998

²⁶ as argued by Development Economists such as Prof. Amartya Sen or Prof. Martha Nussbaum, and even by Human Development Reports. *See* <http://hdr.undp.org/en/humandev/>, last visited on 10/11/2008

Reference may be made to criticism of large scale development projects, which have been criticized by theorists such as E.F. Schumacher.²⁷ In India, it is relevant to consider the Gandhian approach of Inclusive Development²⁸, which is a decentralized and less anthropocentric approach, and aims at internalizing “happiness” through moral obligations.

6. Conclusions:

For a country that aims to maintain an 8% annual growth in GDP, it becomes important to address wealth distribution within the society, for a sustainable growth. The state cannot expect to get away with an unjust land acquisition policy. Compulsory land acquisition itself should be minimized. The current land acquisition policy violates the democratic fabric of the constitution of India. The issue of Displacement is an example of how law has to be consistent with socio-economic and political circumstances, and appears to have failed in doing so. To conclude, there is a strong need to put legal thought into issues concerning the land acquirers as well as to thoroughly investigate issues regarding removing the imbalance from the system.

(2103 words)

²⁷ World Bank, for example, has significantly reduced support for large dams. One may even refer to E.F. Schumacher, *Small is Beautiful: A study of Economics as if people mattered*, (London: Vintage books, 1993)

²⁸ For details on Gandhian approach of Decentralization, see Gandhi, M.K., *Hind Swaraj*, (Ahmedabad: Navjivan Publishing House, 1987)

Appendix I

The Percentage of Tribal Population displaced due to large dams in India

No.	Name of the Project	State	Population facing displacement	Percentage of tribal population
1.	Karjan	Gujarat	11,600	100
2.	Sardar Sarovar	Gujarat	200,000	57.6
3.	Maheshwar	M.P.	20,000	60
4.	Bodhghat	M.P.	12,700	73.91
5.	Icha	Bihar	30,800	80
6.	Chandil	Bihar	37,600	87.92
7.	Koel Karo	Bihar	66,000	88
8.	Mahi Bajaj Sagar	Rajasthan	38,400	76.28
9.	Polavaram	A.P.	150,000	52.90
10.	Maithon & Panchet	Bihar	93,874	56.46
11.	Upper Indravati	Orissa	18,500	89.20
12.	Pong	H.P.	80,000	56.25
13.	Ichampalli	A.P.- Maharashtra	38,100	76.28
14.	Tultuli	Maharashtra	13,600	51.61
15.	Daman Ganga	Gujarat	8,700	48.70
16.	Bhakra	H.P.	36,000	34.76
17.	Masan Reservoir	Bihar	3,700	31
18.	Ukai Reservoir	Gujarat	52,000	18.92

Source: Satyajit Singh, *Taming the Waters*, (Oxford University Press, 1997) and Government Figures²⁹

²⁹ As quoted in Harsh Mandar, Ravi Hemadri and ors, *Dams, Displacement, Policy and Law in India*, Contributing paper to World Commission on dams, available at <http://www.dams.org>, last visited on 10/1/2009