

**Acquisition of land for 'development'  
projects in India**

**The Road Ahead...**



कार्यम सर्व हिताय

**Research Foundation for Governance : in India**

**Acquisition of land for 'development'  
projects in India:  
The Road Ahead**

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Governance: in India.

Published by Research Foundation for Governance: in  
India, 2010

ISBN Number: 81-901203-0-6

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## **Summary of recommendations:**

1. Passing of a clear legislation laying down basic obligations of the Government towards the rehabilitation of displaced persons
2. Use of a method for fixing the monetary compensation which accounts for the potentiality of the price-rise
3. Compulsory Social Impact Assessment, ensuring that the subsequent problems of loss of employment, social surroundings and emotional trauma are accounted for
4. Utilization of the system of Panchayati raj as a platform for the opinions and grievances of the affected people and formation of an interest group, that cannot go unheard
5. A stronger international dialogue on Internal Displacement as a violation of Human Right to foster the political will at the domestic level

A decentralized and less anthropocentric approach towards 'development', and reconsideration of obligations of the state and citizens

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

*- John Rawls*

*"If you are to suffer, you should suffer in the interest of the country."*

*- Jawaharlal Nehru*

## **1. Introduction**

Throughout the history of mankind, societies have tried to balance between individual rights and the power, often a coercive power, of the 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 fundamental natural right, unlike the provisions of the Constitution of India.<sup>1</sup>

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.<sup>2</sup> Not only is the idea of losing one’s land without a free consent problematic, the terms under which it is required to be given away still find their legitimacy under the archaic laws. The fear of losing my yard under unfair terms opened my eyes to the neglected problems with the laws pertaining to compulsory acquisition and

resultant displacement due to the development projects in India.

## **2. Development induced Displacement: Meaning and implications**

The idea that State can take away any property for public good, that is, the doctrine of eminent domain, is itself contested<sup>3</sup>, as it raises the classic debate of *power of state versus individual rights*. Not many in today's world will agree with the idea that the King owns all property and bestows rights, including rights in property, upon his citizens. Let us, however, assume the idea of Eminent Domain as a fact. The existence of Eminent Domain means that the exclusivity of the rights owned in a property is at least diluted against the government acquisition of such property. Now, why would the government

need to take over an individual's property? Typically, government is thought to be representative of the collective, the voice of the public, as compared to the individual. For example, governments build street lights on the roads, because it is a collective interest and not just one person's.

The problem arises when societies have different collectivities within them, and inequality of at least political power between them. So, for example, in a society with groups A, B, C and D, only group B has most power, it is possible that the government which represents B's interests will give a priority to building streetlights for group B, rather than build a school for group C. In a world with limited resources, securing a group's interest may come at the cost of another group's interest. *The question then is, to what extent can we let go of someone's interest in order to serve someone*

*else's interest? Can someone's home be taken away for serving interests of a greater population or the future generations? If one's interests are served at the cost of another's, how should the government make good for the losses?* It is such question which underlies debates concerning development-induced displacement.

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.*<sup>4</sup> Use of coercion or force of any nature by State is central to the idea of development-induced displacement. At the international level, it is viewed as a violation of human rights.<sup>5</sup>

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 famously 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 among other reasons such as environmental impact of the project.<sup>6</sup> 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.

It is not the idea of this report to paint a dark picture of land acquisition for development purposes. However, to deny these perspectives is no more an escape-route for the government, particularly given the increasing international pressure and accountability and rising internal protests in India.

In India, different cases find independent solutions (mostly in the Courts of law through Public Interest Litigation), but the underlying problems remain with the existing laws regarding land acquisition and rehabilitation policy. The grave consequences of such displacements at the very least require legislations and policies that address not only the issue of compensation, but also the larger issues of resettlement, rehabilitation and participation in negotiation, which can mitigate the darker side of land acquisition for development.

Bills such as Rehabilitation and Resettlement Bill, 2007 (hereinafter 'The 2007 RR Bill' or 'The New Rehabilitation Bill') and Land Acquisition (Amendment) Bill, 2007 (hereinafter 'The 2007 Bill' or 'The New Bill') are now being considered by the Parliament and various Committees<sup>7</sup>.

The purpose of this report is to bring out certain key lacunae in the existing legislation and policy and suggest legal, moral and policy alternatives regarding displacement due to large projects in India. Central to the land-acquisition law reforms is the problem of a lack of political will which has prevented the 2007 Bill from being passed in both the houses of the Parliament. Towards the end, I have attempted to highlight this political issue and the lacunae that exist even in the amended bill.

### 3. The Issues at a Glance

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

I believe that the following are a **few major issues** that need to be addressed:

- 1) Required changes in the legislation
  - a) Too wide a definition of "Public Purpose"
  - b) Assumption that the seller is willing to sell

c) Arbitrary, inadequate and only monetary compensation

d) Uncertainty in rehabilitation caused by case-by-case approach

e) No provision for compulsory Social Impact Assessment

f) 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, only Utilitarian considerations and a denial of moral obligations towards fellow citizens.

## **4. The Legal Analysis and Strategy**

### **4.1 The first set of issues:**

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.

#### **a) Definition of a Public Purpose:**

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.<sup>8</sup> 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.<sup>9</sup> Under the existing legislation, even private corporations are granted the right to acquire land under certain sections<sup>10</sup>.

### **Changes in the 2007 Bill:**

The 2007 Bill restricts the definition of a public purpose. The Bill redefines ‘public purpose’ as land acquired for defence purposes, infrastructure projects, or for “any project useful to the general public” where 70% of the land has already been purchased.

The Bill bars acquisition for companies except under the 70% condition. One of the arguments against such a provision has been that the private corporations are capable of using their muscle and money power and manipulate the land-owners and sell the land on unfair conditions for the initial 70%, and for purposes that may not be for benefit of the public. However, a way out could be to ensure other checks on the companies such as strengthening up audit requirements concerning the purchase of land. However, this may only work in theory and the practice may see loopholes and evasions in implementation of stringent audit standards.

Another question that may become a bone of judicial contention in light of the New Bill is: *what makes a purpose "useful to general public welfare"*? This will be

one of the questions that remain crucial in the new legislation. It is not entirely clear whether a person can challenge the acquisition on grounds of public purpose.<sup>11</sup>

Let us take the example of a group of 100 people. If 90 of the 100 people want to eat ice-cream, does eating ice-cream become a public purpose? On the other hand, if 10 out of the 100 people live far from civilization and do not have any access to toilets, though it is a very private matter for a small number of population, this would make a good case of a public purpose. Perhaps we need a thicker definition of a public purpose which looks at a purpose to be public not solely in terms of the number of people affected but in the larger context of morality and socio-political situations. That, once again, becomes a question of ideology and value-judgement, and

dynamic with the change in society. Perhaps we will have to leave this question for the Courts to decide – but wait! The New Bill has does not clearly specify whether a court, or any court can be approached challenging the ‘public’ nature of the purpose.<sup>12</sup>

### **b) Monetary Compensation and the myth of a willing seller**

The current Indian legal framework assumes the displaced person to be a “willing-seller” of his land by granting only monetary compensation.

This does not take into account firstly, that this is not a case of a sale of land but displacement, and having ignored this, such an arrangement does not address the short term and long term effects of compulsory acquisition of land.

As a cost-benefit analysis would reflect, the persons who get displaced often 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 heard<sup>13</sup>. There is reason to suppose a willing sale of their land to the government by members of such a population.

Another question that the myth of a willing seller triggers is, whether a willing seller is the only stakeholder in case of acquisition of land. The current legislation ignores stakeholders other than land owner and tenant. Not only that, the Act allows village common 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.<sup>14</sup>

### **The 2007 Bill:**

The 2007 Bill, when it requires that 70% of the land should be bought by the private corporation before requiring the government to acquire the remaining 30%, there is an assumption that the transfer between the company and the land-owner will be a free-willed one. There is still a continuity of the assumption of a “willing seller” in such a provision. A willing and fair sale may not necessarily be the case, as seen in examples such as Singur, and as suggested in the previous section, needs to be backed up by a check on the private corporations even for the 70% of acquisitions.

Another improvement in the new Land Acquisition Bill is that Section – 3(i)(b) (ii) of the Act includes

violation of traditional rights of the forest-dwellers that may be violated because of acquisition of land. It is not clear how they are to be compensated, because in their case, a monetary compensation may not have the same value as much as measures to preserve their culture and livelihoods.

**c) Method of fixing the monetary compensation:**

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.<sup>15</sup> Sections 23 and 24 of the existing 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.

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.

**The 2007 Bill:**

Acquisition costs will include payment for loss or damages to land, and costs related to resettlement of displaced residents.<sup>16</sup>

Under the New Bill, there are stringent guidelines as far as the powers of the Collector are concerned. This is again a positive step, but this may lead to a lot of litigation, and given court delays, the impact of the provisions will not be felt. That is why setting up of a special authority (Acquisition Compensation Dispute Settlement Authority) was recommended by the Standing Committee on Rural Development headed by Kalyan Singh in the year 2007.<sup>17</sup>

#### **d) Beyond Monetary Compensation:**

We have seen that land acquisition should not be misunderstood to be the case of a willing sale. Therefore, there is a need to look at compensatory mechanisms that are sensitive to the delicate nature of

the situation where a poor person has had to give away his home for the “greater good”.

One way to lessen the pain of the wrongness of the situation is to make the victims a part of the winning team. In simpler words, to make them shareholders in the company which is being set up at the site of acquired land.

Another method to empower the original land-owners is a competitive market situation in which three or four alternative big chunks of farm areas can be selected and farmers groups can be formed in them and then their bargaining can be promoted.<sup>18</sup> 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.<sup>19</sup>

As mentioned before, compensation for the tribal population in terms of their cultural and livelihood context can be tricky to fix.

### **The 2007 Bill:**

The Rehabilitation and Resettlement Bill has incorporated a lot of suggestions which are sensitive to the inadequacy of monetary compensation. ‘It also outlines minimum benefits for displaced families such as land, house, monetary compensation, skill training and preference for jobs. A grievance redressal system was also provided for.’<sup>20</sup>

So far, the approach in rehabilitating and resettling the displaced population has been case-by-case. This is almost like a Russian roulette for the victims. Surely, one of the fundamental facets of the rule of law is that the laws should be predictable and consistent. Hopefully, the change in the legislation will bring in more stability in the rehabilitation of the victims of displacement.

#### **e) Social Impact Assessment**

Only monetary compensation is not sufficient. At the same time, it is necessary to find out the actual loss resulting from displacement. 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 for<sup>21</sup>. Only when there is an idea about the actual loss caused to various stakeholders, that the actual monetary and non-monetary compensations can be fixed.

### **The 2007 Bill**

The 2007 Bill inserts section-3A which makes a Social Impact Assessment mandatory in case a displacement is required for 400 or more families in plain area or 200 or more families in a hilly area.

This is a good step forward. The details about the implementation agency are specified in the Chapter-II of the Rehabilitation and Resettlement Bill 2007. There is also a provision for Environment Impact Assessment in certain cases.

There are no provisions which encourage the reduction of land acquisition. Ideally, measures of acquisition leading to displacement should be the last resort and not a common practice. Perhaps that is the idea behind allowing companies to compulsorily acquire 30% only so long as 70% has been bought in a sale. This, however, needs to be backed up with incentives that will encourage fair sale as compared to acquisition.

There are also no provisions or disincentives against waste of an acquired land due to stalled projects. A mechanism to redirect such lands to a potential future use might be a way forward to ensure that more lives are not wasted behind a wasted development project. There is, however, a mandate to the government to make a list of 'unutilized lands', but that does not

cover partly utilized lands that are subsequently stalled.

Having discussed issues immediately linked with the Act and the New Bill, let us move on to the larger issues which are as important in charting out the future of land acquisition for development projects.

#### **4.2 Increasing People's Participation:**

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 changes in the substantive provisions of the Act, the Community role is still underplayed<sup>22</sup>. 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**. This is particularly important in case of the passing of the Bills of 2007.

After independence, the constitutional interpretation took a socialistic turn.<sup>23</sup> 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 citizens<sup>24</sup>.

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)<sup>25</sup> of the Constitution of India.<sup>26</sup>

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 ideals possessed by the approach adopted during the Nehruvian era, which 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.<sup>27</sup>

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 Displacement<sup>28</sup>, which recommend minimization of displacement and securing proper rehabilitation and participation, need to be addressed.

## **5. The Political Dynamics of the 2007 Bill**

We have seen that a lot of major changes have already been incorporated in the 2007 Bill. This brings us to the final and major problem with the acquisition land

for development purposes. That is, the lack of political will in passing the legislation.

We saw that most of the flaws with the current legislation are sought to be corrected by the Land Acquisition (Amendment) Bill 2007 and the Rehabilitation and Resettlement Bill 2007. The biggest problem, however, is that the Bills have fallen in a limbo without any clue as to when they will finally be passed and executed.

It has been years since efforts have been made to amend this legislation, and scores of promises have been made by different politicians of different political parties at different times.

This raises greater questions about the effectiveness of the existing legislative process as a means to govern

people. India is the largest democracy in the world and stands as an inspiration in many ways, but the case of Land Acquisition Act is a dark blot on the promising record of India. The politics surrounding this Bill and the way it has been put in practice creates doubts about public and private interests in regulation of society. A legislation that clearly affects so many lives is lying in limbo because of a few private interests.

There is clearly an increase in political will, with the UPA-II government promising the passing of the Bill. However, we can only believe it when the Bill finally gets passed and begins to be implemented.

Passing and execution of the Bill is not the final solution. As we saw, even in the existing Bill, there are areas which can potentially be very litigious.

Though the recent Bills seek to remedy the flaws with the existing legislation, how it gets implemented remains to be seen. The Bill establishes the Land Acquisition Compensation Disputes Settlement Authority at the state and central levels. However, rights of the downtrodden that are sought to be protected will only truly be realized if the institutions like the legislature, judiciary and executive realize their duties to protect the interests of even the downtrodden sections of the population. Perhaps such a more comprehensive reform agenda is required even for the Bills to be passed!

## **6. 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”<sup>29</sup>. 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.

Reference may be made to criticism of large scale development projects, which have been increasingly criticized by different institutions and by theorists such as E.F. Schumacher.<sup>30</sup> In the context of India, the

displacement caused due to dams etc has often been a product of the ideologies like Nehruvian socialism.

There is something intuitively and morally wrong about the idea of having development at the cost of some persons' well-being.

At this juncture, it is relevant to consider the Gandhian approach of Inclusive Development<sup>31</sup>, which is a decentralized and less anthropocentric approach, and aims at internalizing "happiness" through moral obligations. Gandhi also replaced the idea of rights with duties. One of the moral gaps that have often been exploited by those in power has been due to the idea that there is no duty unless someone has proved his/her right in the court of law. Why should duties presuppose the existence of rights? This is a larger philosophical issue, and shall not be

addressed here, but it is still worth-while for those in power to put a greater emphasis on their duties, and make political and policy decisions only after fully realizing the burdens of these moral and legal duties.

## **7. Conclusions**

For a country that aims to maintain skyrocketing 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. 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.

As it appears, 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.

## Appendix I

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

<b>N o.</b>	<b>Name of the Project</b>	<b>State</b>	<b>Population facing displacement</b>	<b>Percentage of tribals</b>
	Karjan	Gujarat	11,600	100
	Sardar Sarovar	Gujarat	200,000	57.6
	Maheshwar	M.P.	20,000	60
	Bodhghat	M.P.	12,700	73.91
	Icha	Bihar	30,800	80
	Chandil	Bihar	37,600	87.92
	Koel Karo	Bihar	66,000	88
	Mahi Bajaj	Rajasth	38,400	76.28

	Sagar	an		
	Polavaram	A.P.	150,000	52.90
	Maithon & Panchet	Bihar	93,874	56.46
	Upper Indravati	Orissa	18,500	89.20
	Pong	H.P.	80,000	56.25
	Ichampalli	A.P.- Mahara shtra	38,100	76.28
	Tultuli	Mahara shtra	13,600	51.61
	Daman Ganga	Gujarat	8,700	48.70
	Bhakra	H.P.	36,000	34.76
	Masan Reservoir	Bihar	3,700	31
	Ukai	Gujarat	52,000	18.92

	Reservoir			
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**Source:** Satyajit Singh, *Taming the Waters*, Oxford University Press, 1997 and Government Figures<sup>32</sup>

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<sup>1</sup> See later discussion on the deletion of Right to Property as a Fundamental Right from the Constitution of India.

<sup>2</sup> 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 07/02/2011

<sup>3</sup> 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*.

<sup>4</sup> Pablo Bose, *Development Induced Displacement and Participation*, at <http://www.yorku.ca/crs/EDID/EDID%20Documents/EDID%20WP%202.pdf>

<sup>5</sup> See, <http://www2.ohchr.org>,

<sup>6</sup> <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/12A795722EA20F6E852567F5005D8933>

<sup>7</sup> 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

<sup>8</sup> 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.protectingpropertyrights.org/story.aspx?id=1623&pubid=1410> visited on 07/02/2011

<sup>9</sup> See for example, the case of *State of Bombay v. R. S. Nanji*.

<sup>10</sup> This is proposed to be changed by the Land Acquisition Amendment Bill, 2007, which is still under consideration.

<sup>11</sup> PRS Legislative Brief on Land Acquisition (Amendment) Bill 2007

<sup>12</sup> <http://prsindia.org/theprsblog/2010/09/08/land-acquisition-public-realm-private-gain/>

<sup>13</sup> For a criticism of the Cost-Benefit method see Ravi Kanbur, *Development Economics and the Compensation Principle*, (Cornell University Working Papers).

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<sup>14</sup> See **Appendix – I** for statistics regarding percentage of Tribal population displaced in large scale dams

<sup>15</sup> *Special Article: Land Acquisition in India*, (The Statesman India, January 20, 2007)

<sup>16</sup> PRS Brief bullet point 4

<sup>17</sup> A summary of the report is available at <http://www.prsindia.org/uploads/media/Land%20Acquisition/Land%20Acquisition%20%28Amendment%29%20Bill%20Standing%20Committee%20Report%20Summary.pdf>, visited on 10.03.2011

<sup>18</sup> Supra Note 14

<sup>19</sup> 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.

<sup>20</sup> <http://prcindia.org/theprsblog/2010/09/08/land-acquisition-public-realm-private-gain/>

<sup>21</sup> Ibid at p 5.

<sup>22</sup> 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)

<sup>23</sup> 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.

<sup>24</sup> See Schedule IX to the Constitution of India

<sup>25</sup> 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.”

<sup>26</sup> 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

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education, right to safe and healthy environment and a ‘good quality of life’.

<sup>27</sup> For a detailed analysis on how displacement is “Unjust” in Rawlsian 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)

<sup>28</sup> U.N. Document E/CN.4/1998/53/Add.2, dated 11 February 1998

<sup>29</sup> 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

<sup>30</sup> 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)

<sup>31</sup> For details on Gandhian approach of Decentralization, see Gandhi, M.K., *Hind Swaraj*, (Ahmedabad: Navjivan Publishing House, 1987)

<sup>32</sup> 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>

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## **About the author**

Kelly A Dhru is an MPhil in Law (Jurisprudence) candidate at the University College, University of Oxford. She is a Supervising Editor of Oxford University Commonwealth Law Journal. She finished her BCL with Distinction from University College, Oxford in July 2010 as a Bharat Petroleum Scholar and was a topper in the first batch of Gujarat National Law University. She has had the experience of working on research projects of The World Bank, Rural Development Institute and has done her internships at different levels of courts in India. She has presented several papers at national and international conferences on development issues of India. She is a founding member of Research Foundation for Governance: in India.

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