



Land Related Issues

1 Introduction

Issues related to land have become the most contentious and complex in recent times in India. The issues vary from the age old debate on displacement vs development to latest land acquisition, rehabilitation and resettlement.

There is an urgent need of land for the expanding urban areas, but at the same time, there is also a need to conserve agricultural land to feed the increasing population. Protection of environment and biodiversity are the hot-topics but at the same time there is an outcry on lack of growth and development. The land issues are being revisited with a new perspective with the impact of liberalization, privatization and globalisation.

2 Debate on Displacement vs. Development

In the 1950s and 1960s, it may be said that the dominant view on development was informed by modernization theory, which, put crudely, saw development as transforming traditional, simple, third world societies into modern, complex and westernized ones. Seen in this light, large-scale, capital-intensive development projects accelerated the pace toward a brighter and better future.

In recent decades, however, a 'new development paradigm' has been articulated, one that promotes poverty reduction, environmental protection, social justice, and human rights. In this paradigm, development is seen as both bringing benefits and imposing costs. Among its greatest costs has been the involuntary displacement of millions of vulnerable people.

- After independence, India faced massive challenges in the economic front. Centuries of colonial rule had drained out its productive resources and led to huge unemployment and disguised unemployment. The subsistence agriculture often battered by floods and droughts could barely hold up an ever-growing population.
- Determined steps were taken to bring development and make India an industrialised and modern nation. The 'Five-Year Plans' emphasised on developing key sectors like irrigation, power, heavy industries and transport. Large dams, colossal steel plants, national highways and big ports were built to create 'growth centres' with the twin objective of creating employment and reducing the burden of import.
- Eventually most of these projects came up in mineral-rich areas, upper stream of the rivers and coastal belts. While heavy industries like steel and power were set up near coal and iron-ore rich belts, dams were built in mountain ranges and refineries and ports in coastal areas.
- These developmental projects, though increase productivity and production to a great extent, give rise to involuntary displacement, thereby creating untold miseries for the oustees as has been experienced in the completed and ongoing projects.

- Apart from the cost of displacement and relocation, there is also the problem of deforestation, loss of agricultural land, environmental degradation, and marginalization of the weaker sections. These adverse effects are called the 'backwash effects.' The benefits of 'spread effects' are enjoyed by the nation at large, while it is the local population that bear the brunt of the backwash effects.
- Development-related Displacement may be divided into two subcategories – direct and indirect. Direct displacement refers to those cases, where the installation and commissioning of development projects lead to a direct displacement of people who have inhabited these sites for generation together.
- Indirect displacement emanates from a process whereby installation and functioning of projects continuously push up the consumption of natural and environmental resources, thereby depriving the indigenous people of the surrounding regions of their traditional means of wherewithal and sustenance.

2.1 Impact of Developmental Projects on the Displaced

- Landlessness: This is the principle form of de-capitalization and pauperization of displaced people, as they lose both natural and human-made capital.
- Joblessness: Unemployment or underemployment among re-settlers often endures long after physical relocation has been completed.
- Homelessness: Loss of a family's individual home and the loss of a group's cultural space tend to result in alienation and status deprivation.
- Marginalization: Marginalization occurs when families lose economic power and spiral on a 'downward mobility' path. Many individuals cannot use their earlier acquired skills at the new location; human capital is lost or rendered inactive or obsolete. Economic marginalization is often accompanied by social and psychological marginalization.
- Food Insecurity: Forced uprooting increases the risk that people will fall into temporary or chronic undernourishment, defined as calorie-protein intake levels below the minimum necessary for normal growth and work.
- Increased Morbidity and Mortality: Displacement-induced social stress and psychological trauma are sometimes accompanied by the outbreak of relocation related illnesses, particularly parasitic and vector-borne diseases such as malaria. The weakest segments of the demographic spectrum— infants, children, and the elderly—are the most affected.
- Loss of Access to Common Property: For poor people, loss of access to the common property assets that belonged to relocated communities (pastures, forest lands, water bodies, burial grounds, quarries, and so on) result in significant deterioration in income and livelihood levels.
- Social Disintegration. The fundamental feature of forced displacement is that it causes a profound unraveling of existing patterns of social organization. Long-established residential communities and settlements are disorganized, while kinship groups and family systems are often scattered. Life-sustaining informal social networks that provide mutual help are rendered non-functional.
- Violation of Human Rights: In addition to violating economic and social rights, arbitrary displacement can also lead to violations of civil and political rights, including: arbitrary arrest, degrading treatment or punishment, temporary or permanent disenfranchisement and the loss of one's political voice.

3 Environment vs Development

The environment/climate change crisis and development needs of the India's poor require us to acknowledge the necessity and urgency for both continued growth at the current pace, and rapid greening of this growth strategy.

3.1 Economic Development

- According to India's Planning Commission, rapid economic growth has helped reduce the poverty rate from 37.2% in 2005 to 29.8% in 2010. That is 40 million less people in the absolute number of the country's poor. Per capita income doubled during those five years, as well.
- The World Bank reports, "The reforms India started in 1991 hold the promise of considerable improvements in the living standards of the country's 300 million poor. During the last few decades,

India's inward-looking and public sector driven industrialization strategy led to rates of growth and poverty reduction far more modestly than those witnessed elsewhere in the world, particularly in South East Asia. The economy has responded well to the reforms, and the government has made it an explicit objective to accelerate the development of the country's human resources. The last five years have shown the rates of growth that India could achieve with market oriented development policies and a better integration with the world economy."

- Social and Economic Development go hand in hand. With a thriving economy, human rights in India will flourish. Developing the economy of India will require improvements in education, and worker training, in order to improve human capital. With improved education, and worker skill, worker's rights will be improved in India. Thus improving human rights.

3.2 Impact of Environmental Protection on Economic Growth

- India and many developing countries actually suffer "a double injustice": environmental degradation and climate change will impinge on the poor countries hardest, but at the same time, they are required to be "part of the solution" by cutting greenhouse gas (GHG) emissions at the expense of their economic development.
- Environmental degradation can only intensify the existing development problems. For example, increased maximum temperatures and changing rainfall patterns are already exerting negative impacts on the agriculture and food security of many low-income communities.
- Compared to developed nations, developing countries are much more vulnerable to the effects of climate change due to their low capacity to adapt and their disproportionate dependency on natural resources for welfare.
- The resource-intensive model of growth of the past fails not only because of the lack of cheap raw materials, but also because of the earth's limited capacity to absorb carbon emissions and waste. Since environmental degradation will harm human productivity and welfare, the traditional economic growth pattern cannot be sustainable, and will eventually be self-defeating.

3.3 Maintaining the Balance

The perception of a trade-off between the two goals of development and environmental protection rests on the view that environmental protection is an obstacle to rapid growth. The reality, however, is that it will not be possible to sustain high growth in the coming years without environmental care. The reason is that we are facing a twin crisis — economic and environmental — and the two are highly interlinked.

- The spike in food prices signal in good measure, pressures on production that are exacerbated by the deleterious effects of environmental devastation and climate change.
- While some may set aside the global risks of climate change as being distant, recent extreme weather events point to changes that may already be upon us.
- The economic costs, including the losses caused by air pollution, water contamination and solid wastes as well as deforestation are estimated to amount to some three per cent of GNP in China as well as India, Argentina, Turkey and elsewhere.
- Strikingly, prevention is often far cheaper than cure — whether it is curbing industrial pollution, arresting deforestation or reinforcing structures in disaster-prone areas.
- Green growth aiming to achieve a harmony between economic growth and environmental sustainability is just what the world needs to obtain long-term and all rounded human development.
- With sound protection and management, natural capital can actually yield considerable economic dividends for India as well — especially due to its dependent on agricultural production, which is in turn highly dependent on natural resources for the livelihoods of producers.
- Alternatively, economic development can provide a solid material foundation for environmental protection efforts, enabling Indian government to take better care of their ecosystems, and equip them financially and technologically for the fight against climate change / environment. It is about growing cleaner and greener, but not slower.

4 Agriculture vs. Industrial Use

A growing industrial sector is crucial to greater economic development and takes in a number of areas as a country develops. Ensuring steady industrial growth helps to compliment and sustain continued economic development. A well-developed industrial sector, covering various different areas is vital to the economic development of a country. With a variety of different industrial sectors that feed off each other, a well-balanced industrial sector is at the centre of economic development.

However, in a developing country like India, agriculture still plays a major role. The agriculture sector provides employment to 58.4% of country's work force and is the single largest private sector occupation. Various important industries in India find their raw material from agriculture sector - cotton and jute textile industries, sugar, vanaspati etc. are directly dependent on agriculture. Handloom, spinning oil milling, rice thrashing etc. are various small scale and cottage industries which are dependent on agriculture sector for their raw material. Agriculture accounts for about 14.7% of the total export earnings. Besides, goods made with the raw material of agriculture sector also contribute about 20% in Indian exports.

There is no doubt that without agriculture, India cannot exist and without industry, it cannot develop. Agriculture and industry are like two wheels of a bicycle; one cannot survive without other. So it's necessary for a country to have both - agriculture as well as industry. Industries should be promoted but not by compromising with agriculture. Policies should be made in order to promote both, industries as well as agriculture.

- Government should try to set up industries in those lands, which are either unproductive for agriculture or barren. India has a vast reserve of barren lands. These lands are either not suitable for agriculture due to lack of fertility or shortage of natural resources such as water and minerals.
- Such areas can be found in western region of the country, which includes states like Gujarat and Rajasthan. Areas, which have very less food production, can also be utilized for industries.
- But setting up of industries in such lands are not always possible. The location of an industry depends upon several factors, which includes availability of raw material, cheap labour, communication and other economic viabilities.
- If the agricultural lands are to be used for industrial development, government must ensure that the farmers are compensated adequately. The compensation may be in the form of money or in job, whichever viable.
- While, food production must also be increased by using scientific method of agriculture. Genetically modified seeds, which are resistant to pest and can have high productivity, can increase food production. Modern methods of agriculture can also benefit farmers.

5 Tribal Land Rights

Forests in India are home to over 250 million people, whose primary source of livelihood is forest produce. But under the Indian Forests Act 1927, reserved and protected forests couldn't be used for farming or livestock grazing. This led to mass encroachment by traditional forest dwellers, who were then were subjected to legal action in the form of eviction, fines and arrest.

The situation deteriorated after the Zamindari (tenant farming) system was abolished in the 1950s, leading to a diminished social sense of ownership and protection of forest among the tribals as there was no law to protect their interests.

After a period of dissent and social unrest, the government decided to grant land ownership titles to locals based on how long they had been there. This system raised the importance of the Patwari (keeper of land records). But as the tribals didn't have any means of proving the period of occupation, the system became corrupt, vesting all the power in the hands of one person, the Patwari.

5.1 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted to correct the “historical injustices” done to forest dwellers under the Indian Forest Act, 1927, which gave the government arbitrary power to take over forest land without proper rehabilitation and resettlement of the traditional inhabitants.

- The rights granted under the act are:
 - ✓ Title rights - i.e. ownership - to land that is being farmed by tribals or forest dwellers as on 13 December 2005, subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted.
 - ✓ Use rights - to minor forest produce (also including ownership), to grazing areas, to pastoralist routes, etc.
 - ✓ Relief and development rights - to rehabilitation in case of illegal eviction or forced displacement; and to basic amenities, subject to restrictions for forest protection.
 - ✓ Forest management rights - to protect forests and wildlife.
- Eligibility to get rights under the Act is confined to those who "primarily reside in forests" and who depend on forests and forest land for a livelihood. Further, either the claimant must be a member of the Scheduled Tribes scheduled in that area or must have been residing in the forest for 75 years.
- The Act provides that the gram sabha, or village assembly, will initially pass a resolution recommending whose rights to which resources should be recognised. This resolution is then screened and approved at the level of the sub-division and subsequently at the district level. The screening committees consist of three government officials and three elected members of the local body at that level.

Critics of the FRA say it was enacted by the government for privatizing natural resources and making vote banks out of the forest dwellers. But the basic principles of the act were largely misunderstood. Contrary to popular belief, the FRA is not a land redistribution legislation. It merely provides for land ownership titles to forest dwellers who have occupied and farmed the land. These titles cannot be sold but can be passed on within a family.

But even after many years of implementation of the landmark legislation - which overturned centuries-old colonial legislation made by the British to exploit India's rich forest resources –it has not shown the results hoped for.

- Land rights activists say poor implementation is down to a number of issues - a lack of awareness, difficulties in proving entitlement and illegal interference by forest department officials to prevent claims being awarded.
- Activists accuse forest officials of "deliberately sabotaging" claims for land by destroying the evidence and creating hurdles for claimants.
- Accusations of violations of the law itself by state authorities are also widespread, with forest-dwellers complaining that they are being evicted which, under the legislation, can only be done with their agreement.

6 Land Acquisition in India

Land acquisition remains at the centre of many controversies and public policy paralysis in India. There are very few public policy issues in India that rival land acquisition in terms of its complexity, challenges and significance to country's growth and transition to more urbanised and industrialised status. Currently, the Union Government is mounting series of efforts to clear several hurdles with regard to the existing land law which dates back to 1894.

6.1 Land Acquisition Act 1894

Till 2014, the land acquisition in India was governed by the colonial period's Land acquisition act of 1894. The Land Acquisition Act of 1894 allowed the government to acquire private lands. Under the 1894 Act, displaced people were only liable for monetary compensation linked with market value of the land in question, which was still quite minimal considering circle rates are often misleading.

- The title of the law itself conveyed that its primary purpose was to expedite the acquisition of land.
- Once the acquiring authority has formed the intention to acquire a particular plot of land, it can carry out the acquisition regardless of how the person whose land is sought to be acquired is affected.
- There was no real appeal mechanism to stop the process of the acquisition. A hearing (under section 5A) was prescribed but this was not a discussion or negotiation. The views expressed were not required to be taken on board by the officer conducting the hearing.
- There were absolutely no provisions in the 1894 law relating to the resettlement and rehabilitation of those displaced by the acquisition.
- Urgency clause: This was the most criticised section of the Law. The clause never truly defined what constituted an urgent need and left it to the discretion of the acquiring authority. As a result almost all acquisitions under the Act invoked the urgency clause.
- Even where acquisition had been carried out the same had been challenged in litigations on the grounds mentioned above. This resulted in the stalling of legitimate infrastructure projects.

6.2 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement act, 2013

- The new act provided for land acquisition as well as rehabilitation and resettlement. It replaced the Land Acquisition Act, 1894.
- The process for land acquisition involves a Social Impact Assessment survey, preliminary notification stating the intent for acquisition, a declaration of acquisition, and compensation to be given by a certain time. All acquisitions require rehabilitation and resettlement to be provided to the people affected by the acquisition.
- Compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in case of urban areas.
- The new law stipulates mandatory consent of at least 70 per cent for acquiring land for public-private-partnership (PPP) projects and 80 per cent for acquiring land for private companies.
- Purchase of large pieces of land by private companies will require provision of rehabilitation and resettlement.
- The provisions of this act shall not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

6.3 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014

The ordinance was promulgated by the new NDA government in December 2014. Following are the important changes brought into the act:

- The LARR Act 2013 exempted 13 laws (such as the National Highways Act, 1956 and the Railways Act, 1989) from its purview. However, the LARR Act 2013 required that the compensation, rehabilitation, and resettlement provisions of these 13 laws be brought in consonance with the LARR Act 2013, within a year of its enactment, through a notification. The Ordinance brings the compensation, rehabilitation, and resettlement provisions of these 13 laws in consonance with the LARR Act 2013.
- The LARR Act 2013 requires that the consent of 80% of land owners is obtained for private projects and that the consent of 70% of land owners be obtained for PPP projects. The Ordinance creates five special categories of land use which are exempted from the above requirement: (i) defence, (ii) rural

infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure projects including Public Private Partnership (PPP) projects where the central government owns the land.

- In addition, the Ordinance permits the government to exempt projects in these five categories from the following provisions, through a notification:
 - (i) The LARR Act 2013 requires that a Social Impact Assessment be conducted to identify affected families and calculate the social impact when land is acquired.
 - (ii) The LARR Act 2013 imposes certain restrictions on the acquisition of irrigated multi-cropped land and other agricultural land. For example, irrigated multi-cropped land cannot be acquired beyond a limit specified by the government.
- The LARR Act 2013 required that if land acquired under it remained unutilised for five years, it was returned to the original owners or the land bank. The Ordinance states that the period after which unutilised land will need to be returned will be five years, or any period specified at the time of setting up the project, whichever is later.
- The LARR Act 2013 excluded the acquisition of land for private hospitals and private educational institutions from its purview. The Ordinance removes this restriction.

6.4 Land Acquisition and Adivasis

Among the worst excesses committed in India's six decade-old democracy, the forcible displacement of rural Indians in the name of nation-building ranks high up. And within this, the brunt of the oppression, emanating from the state's claim of eminent domain, has been borne by India's adivasis. In 2011, the Twelfth Five-Year Plan blandly noted that of the estimated 60 million people displaced in development projects since independence, as many as 40% were adivasis; their share in the general population has hovered around 8%. That Indian society lacks quantitative or qualitative insight into violence against such communities for developmental and industrial projects is a measure of how policymakers and citizens have routinely devalued the adivasi point of view and experience. The adoption of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act), which received the presidential assent on 26 September, marks a long overdue move to end the colonial Land Acquisition Act of 1894, the primary instrument through which the state forcibly evicted its citizens. The new law is potentially a step towards greater justice for adivasi communities.

The LARR Act states that as far as possible, land will not be acquired in the scheduled areas. Though in a damaging omission, which should be corrected, the Act makes no reference to adivasis who live in areas that are still not covered by the Fifth Schedule, which is an estimated 50-70% of the adivasi population, according to the National Advisory Council. If acquisition is done, the Act goes on to say, it will only be done, "as a demonstrable last resort". Much will hinge on how rules currently being drafted for the Act define this ambiguous "last resort" principle. Given official estimates that 90% of India's coal reserves are located in adivasi areas, as are 50% of other key minerals and prospective dam sites, it is easy to envisage governments and elites continuing to deploy the "national interest" argument to jettison adivasi interests for such projects.

The far more meaningful provision for adivasi communities is that acquisition in scheduled areas will be now be subject to the free, prior and informed consent principle. This is what the relevant clause states:

*"In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or Panchayats or autonomous District Council, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, **in all cases of land acquisition***, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force.."*

This by far is the most unequivocal recognition in law of a people's constitutional right to participate in decision-making over projects that affect it, and more importantly, to be able to say no to such projects. The clause is an essential acknowledgement of the numerous, and increasingly intense, protests unfolding across adivasi blocks of central India, despite state and police efforts to intimidate and stamp down such citizen movements against forced displacement. However, given numerous instances of officials and corporations usurping gram sabha powers, the Act should have recognised violation of the consent clause as an offence, to be penalised by fines or imprisonment, just as it has laid down such penalties for violation of compensation and resettlement clauses.

Finally, if the LARR Act has to be meaningfully implemented, it should be accompanied by a massive awareness campaign, primarily directed at three audiences. The first audience should be officialdom, particularly administrative and police personnel working within the district, who have to look beyond the deeply entrenched notion of eminent domain, give up the imperious power and rent-seeking opportunities that come with it, and instead imbibe and feel responsible for the participatory spirit of the new law. Having the average revenue and forest official, policeman and collector respect the gram sabha as a legitimate site of decision-making is a mammoth task, and we should not underestimate the importance of pushing for this shift in official attitudes if the law has to mean something on the ground.

The second audience that needs to be sensitised is business, including state-owned and private mining corporations, steel and power corporations that are looking to operate in or source raw material from adivasi areas. Many of the people working in these entities are openly contemptuous of the new Act and view it as a hurdle to economic activity and profits, instead of a mechanism to have a more equal, expansive and educative conversation about a proposed project's benefits and damages, and as a tool for pre-empting conflict and abuses.

Finally, the campaign should actively engage adivasi communities, who must not just be told about the safeguards in the new law but also the seriousness of its intent. The latter is especially important, given how little faith villagers today have in public hearings, knowing from bitter experience that such events have been reduced to just another box to be ticked by officials in the clearance process. One way of crafting a campaign for this audience could be for the Ministry of Tribal Affairs to closely ally with networks like the Bhasha Research Institute, the central Indian citizen media initiative Swara, adivasi student movements, lawyers, community leaders and activists on the ground to produce and propagate succinct rights primers in various adivasi languages. Such written or oral accounts should clearly outline for communities on the ground what their new participation and anti-displacement rights are, how they can exercise them, and finally the mechanisms available to them to raise violations, of which there are bound to be many as a landmark law takes life on the ground.

Appendix: National Policy on Rehabilitation and Resettlement 2007

The policy aims at striking a balance between the need for land for developmental activities and, at the same time, protecting the interests of the land owners, tenants, the landless, the agricultural and non-agricultural labourers, artisans, and others whose livelihood depends on the land involved.

It recommends that only the minimum necessary area of land commensurate with the purpose of the project should be taken and the use of agricultural land for non-agricultural purposes should be kept to the minimum. Also, multi-crop land should be avoided and irrigated land use should be kept to the minimum for such purposes. Projects may preferably be set up on wastelands or un-irrigated lands.

The objectives of the National Rehabilitation and Resettlement Policy are as follows:-

- To minimize displacement and to promote, 'as far as possible, non-displacing or least-displacing alternatives;
- To ensure adequate rehabilitation package and expeditious implementation of the rehabilitation process with the active participation of the affected families;
- To ensure that special care is taken for protecting the rights of the weaker sections of society, especially members of the Scheduled Castes and Scheduled Tribes, and to create obligations on the State for their treatment with concern and sensitivity;
- To provide a better standard of living, making concerted efforts for providing sustainable income to the affected families;
- To integrate rehabilitation concerns into the development planning and implementation process; and
- Where displacement is on account of land acquisition, to facilitate harmonious relationship between the requiring body and affected families through mutual cooperation.

Key features of the National Rehabilitation and Resettlement Policy, 2007 are the following:

- Policy covers all cases of involuntary displacement;
- Social Impact Assessment (SIA) introduced for displacement of 400/200 or more families in plain/tribal, hilly, Scheduled Areas, etc.;
- Tribal Development Plan in case of displacement of 200+ ST families;
- Consultations with Gram Sabha or public hearings made compulsory;
- Principle of rehabilitation before displacement;
- Ombudsman for grievance redressal; and
- A National Rehabilitation Commission.

The benefits to be offered under the policy to the affected families include:

- Land-for-land, to the extent government land would be available in the resettlement areas;
- Preference for employment in the project to at least one person from each nuclear family within the definition of the 'affected family', subject to the availability of vacancies and suitability of the affected person;
- Training and capacity building for taking up suitable jobs and for self-employment;
- Scholarships for education of the eligible persons from the affected families;
- Preference to groups of cooperatives of the affected persons in the allotment of contracts and other economic opportunities in or around the project site;
- Wage employment to the willing affected persons in the construction work in the project;
- Housing benefits including houses to the landless affected families in both rural and urban areas; and other benefits.

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